

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Docket No. SA-10-CR-536(1)-FB
)
ROBERT BROOKS,) San Antonio, Texas
) January 29, 2013
Defendant.)
_____)

REDACTED TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE FRED BIERY
CHIEF UNITED STATES DISTRICT JUDGE
AND A JURY

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Chris Poage, RMR, CRR
United States Court Reporter

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Government's Exhibit No. 35-15 admitted 1187

Defendant's Exhibit No. 51-05-Z admitted 1200

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United States Court Reporter

1 (January 29, 2013, 8:35 a.m., jury out, defendant not
2 present, open court)

3 THE COURT: Mr. Harris, you wanted to bring something
4 up?

5 MR. HARRIS: Yes. May it please the Court. Good
6 morning, Your Honor. You may recall that during opening
7 statement I had told the jury that there was one count for
8 which we might not put on proof of mailing. At the close of
9 the government's case, when the defense made its Rule 29
10 motion, which I opposed in toto, I was thinking that the
11 document that we had in support of a shipment from Flower
12 Mound, Texas to Austin, Texas, on Count 6, on its face
13 indicated it was a commercial carrier.

14 In preparing -- in reviewing exhibits last night to
15 prepare my closing argument, I realized I was in error and I
16 misled the Court in opposing the dismissal of Count 6.

17 So at this time the United States seeks leave of
18 Court to dismiss Count 6 or, in the alternative, asks the Court
19 to rule nunc pro tunc in granting the defense's Rule 29 motion
20 as to Count 6, or ask the Court prospectively to grant the Rule
21 29 motion at the close of all the evidence, whichever method
22 the Court deems to bring about the just result of the dismissal
23 of Count 6.

24 THE COURT: That's fine. All right. But now, tell
25 me -- and, of course, I forgot about that, also. The charge is

1 ready. What does that do to the charge? Is it just the
2 verdict form? Actually, though, the indictment has Count 6 in
3 it.

4 MR. HARRIS: It does.

5 THE COURT: And then it talks -- the elements, of
6 course, of all of those counts are the same.

7 MR. HARRIS: Which are identical. So I don't think
8 it affects the charge, other than you may have to say, rather
9 than Counts 2 through 9, you may need to add, with the
10 exception of Count 6.

11 THE COURT: And right now the verdict form has a
12 place for Count 6, so we probably need to --

13 MR. HARRIS: We need to delete that.

14 THE COURT: -- take that out.

15 MR. HARRIS: Yes.

16 THE COURT: But the indictment is what the indictment
17 is. I can tell them Count 6 is no longer in the case.

18 MR. HARRIS: True.

19 THE COURT: So we only need to change the verdict
20 form.

21 MR. HARRIS: Correct. And the same transaction was
22 charged as overt acts of Count 1, so it's still relevant
23 evidence for that purpose.

24 THE COURT: Okay.

25 MR. HARRIS: But as to a substantive count, we blew

1 that one.

2 THE COURT: Well, there's plenty of others.

3 You heard all that.

4 LAW CLERK: I did, Judge. On Page 12 we talk about
5 Count 6, and it goes into the details. I'll also delete that.

6 THE COURT: No.

7 MR. HARRIS: Excellent. Thank you.

8 THE COURT: Okay. That's the closing document.
9 Well, is that in the charge or the indictment?

10 LAW CLERK: It's in the indictment. And then here's
11 the charge for Counts 2 through 9. And it's got "to wit" --

12 THE COURT: Leave it in the indictment. It is what
13 it is.

14 LAW CLERK: Right.

15 THE COURT: But, yes, and then take it out there.

16 LAW CLERK: And then the verdict form.

17 THE COURT: And the verdict form. Okay. So it's two
18 pages that have to be changed.

19 LAW CLERK: Yes, sir.

20 THE COURT: All right. By the way, one last time for
21 the record -- and Mr. Brooks, I guess, is on the way?

22 MR. GORDON: Yes. I presume so, Your Honor.

23 MR. HARRIS: I remind the Court that we weren't
24 starting till 8:45.

25 THE COURT: Yeah. And that's why we've got a couple

1 of jurors missing, also. But one last time, there hasn't been
2 any change by Mr. Brooks as far as testifying?

3 MR. GORDON: Oh, no, Your Honor. No change in that.

4 THE COURT: All right. So just make those changes.
5 And then y'all can start stapling together.

6 LAW CLERK: Yes, sir.

7 MR. HARRIS: And, again, my apologies to the Court.

8 THE COURT: Well, that's all right. That's why we
9 don't staple until the very end.

10 MR. GORDON: There was one issue I'd like to bring
11 up, Judge.

12 THE COURT: Sure.

13 MR. GORDON: Mr. Harris had objected to some of my
14 evidence I was going to bring in the other day, some of my,
15 like, charts and stuff for my expert. So I would like to be
16 allowed the option to present them as demonstrative evidence in
17 my closing summary of our position of the case.

18 THE COURT: No, they're not evidence. They're your
19 argument. If you want to -- I assume Mr. Harris is going to
20 put up things on the screen of evidence. Let me see that and
21 make sure that -- they can be used to exemplify your argument,
22 but they're not evidence.

23 MR. GORDON: Right, Judge. I'm not offering to
24 introduce them into evidence. I just want to be able to show
25 it to the jury, put it on the screen to amplify my argument.

1 THE COURT: Yeah. You're arguing that he relied on
2 other professionals to do their part. That's argument.

3 (Defendant enters courtroom)

4 THE COURT: All right. This one about Mr. Howard, it
5 says, "Reviewed legal papers, provided legal advice to Robert."
6 Is there enough in the record, Mr. Harris, to support that
7 argument?

8 MR. HARRIS: Those words by themselves, I think it's
9 fair argument. I think it's, you know, no great state secret
10 in rebuttal I'm going to argue that it twists the evidence.
11 But I think it's fair argument.

12 THE COURT: Okay. Joseph Cooper, Lisa Richardson not
13 indicted. Okay. That's true.

14 MR. HARRIS: I think my same arguments would apply to
15 the help the borrowers -- helped the borrowers fill out
16 applications. I think, you know, same argument applies to
17 that. But I think it's fair argument.

18 THE COURT: Then the buyers, the loan officers. And
19 so your argument basically is that Mr. Brooks was relying on
20 these licensed professionals and so forth?

21 MR. GORDON: Yes, Judge.

22 THE COURT: They might -- they might buy that
23 argument. Appraisers. Okay. All right. Do you have another
24 copy of this that doesn't have D-28 on it -- or D-98 or you can
25 white it out.

1 MR. GORDON: It won't show up on the screen, D-98,
2 when I show it to the jury.

3 THE COURT: Well, are you sure?

4 MR. GORDON: Yes. That D-98 was just handwritten on
5 the paper version. I would use my computer to put it on the
6 screen.

7 THE COURT: Oh, I see. You're not putting this up
8 there?

9 MR. GORDON: No, not that actual paper.

10 THE COURT: That's fine. All right. And then, of
11 course, that's -- the difference between evidence and this sort
12 of thing is that that -- those documents are not going into the
13 jury room like evidence would.

14 MR. GORDON: Yes, Judge.

15 THE COURT: Anything else?

16 MR. GORDON: Well, I have some other things on the
17 screen that basically are the jury charge, just excerpts of the
18 jury charge and my argument about how they should rule, and
19 that's basically it.

20 THE COURT: That's fine.

21 MR. GORDON: Okay. Thank you, Judge.

22 THE COURT: All right. Mr. Harris, anything further?

23 MR. HARRIS: Uncharacteristically unprepared, if I
24 may say, I don't think I have a copy of the final jury charge.
25 I assume the Court will be providing that for us?

1 THE COURT: You're going to -- the final copy?

2 MR. HARRIS: Yeah, at the time that it's being read
3 to the jury.

4 THE COURT: Oh, yeah, we'll get that. They are all
5 copied. They just need to be tweaked and stapled.

6 MR. HARRIS: Okay. Thank you.

7 THE COURT: All right. We're missing one juror.

8 COURT SECURITY OFFICER: Let me check.

9 THE COURT: Or were.

10 (Discussion off the record)

11 (Witness enters courtroom)

12 THE COURT: Ms. Coleman, if you'll come up here to
13 the witness stand, and we'll be ready when the jury comes in.
14 You can wind your way through there. That's fine. No, up
15 here, right here. And just have a seat there. When the jury
16 comes in, everyone will rise. And then after I say "be
17 seated," that means everybody except you and me.

18 THE WITNESS: Okay.

19 THE COURT: And then I'll give you the oath, and then
20 you'll be seated. Okay.

21 THE WITNESS: Okay.

22 THE COURT: And then Mr. Gordon is going to ask
23 questions first, and then Mr. Harris on cross-examination.

24 (Discussion off the record)

25 (Jury enters courtroom)

Jennifer Coleman - Direct

1 THE COURT: You may be seated.

2 Raise your right hand, please.

3 (The oath was administered)

4 THE COURT: All right. You may be seated.

5 Mr. Gordon, you may proceed. And for the record,
6 this is Ms. Jennifer Coleman of Pinnacle Appraisers.

7 MR. GORDON: Yes. Thank you.

8 **JENNIFER COLEMAN, DEFENDANT'S WITNESS, SWORN**

9 **DIRECT EXAMINATION**

10 BY MR. GORDON:

11 Q. Good morning, Ms. Coleman. Can you tell us what you do
12 for a living, Ms. Coleman?

13 A. I work at a law office. I used to be a real estate
14 appraiser.

15 Q. Okay. What time period were you an appraiser, roughly?

16 A. Up until '09, so about five years before that, so most of
17 the 2000s.

18 Q. 2004 to 2009, approximately? Okay.

19 A. '03, I think, to '09.

20 Q. Okay. Can you tell me generally what kind of training you
21 have to have to be a real estate appraiser?

22 A. You have to have -- you're an apprentice generally the
23 first year. You have a sponsor that reviews your work, and you
24 have many hours of class time. And someone has to sign off on
25 all of your work until you actually get your license. And then

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1 you've got to go take a test and get your license and then --

2 Q. And, generally speaking, what kind of things are they
3 teaching you during your training?

4 A. Just how to value a property, you know, how to look at the
5 market and figure out the value based on sales in the
6 neighborhood or rental properties or, you know, whatever the
7 case is. They teach you how to measure homes, just how to read
8 the MLS documents that you can pull up online so that you know
9 what the sales are about.

10 Q. Okay. And they teach you how to prepare appraisal
11 reports?

12 A. Certainly.

13 Q. Okay. Do they teach you how to research property owners?

14 A. Yes.

15 Q. Okay. And you mentioned before about looking at other
16 sales in the area. Did they teach you how to come up with
17 something called comparables?

18 A. Sure.

19 Q. Okay. And just explain to us in general terms what a
20 comparable is?

21 A. So you have a subject property that you need to get a
22 value for because you're going to get a loan or refinance a
23 home. And so you see what sales -- or what homes have sold in
24 the neighborhood. So you want to get something that's close to
25 the subject property, and you want to get something that's

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1 similar in size, similar in updating, you know, similar in age.
2 But sometimes, if you can't find that, you get something as
3 best you can, and then you adjust them to make them similar to
4 the subject properties so that once all the adjustments are
5 made, you can come -- you can come up with a value based on
6 several different comparables after you've made adjustments.

7 Q. And where were you working, what city were you working in
8 around that time period, 2003 to 2009?

9 A. We had appraisals as far north as Sherman. We lived -- I
10 lived in Rowlett. But as far south -- I believe I even did
11 some appraisals in Waco, as far east as Tyler and as far west
12 as I believe Kennedale, which is west of Fort Worth. So all
13 over the Metroplex.

14 Q. Okay. So are you familiar with the general types of
15 property in the Dallas area?

16 A. Certainly.

17 Q. And the property values in the Dallas area, generally?

18 A. Yes.

19 Q. What about the downtown area at that time? Were you
20 familiar with the property values in that area?

21 A. You can look them up and make yourself familiar, you know,
22 wherever you are, so I was.

23 Q. Okay. And did you at some point come to do some
24 appraisals for a place called Topaz Townhomes condos?

25 A. Yes.

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1 Q. Okay. And do you remember what time period, roughly, any
2 closer than what we have already described?

3 A. In '07, mid-'07 to late '07. So July to December, I
4 believe.

5 Q. Okay. And do you remember approximately how many
6 appraisals you did in, let's say, 2007 in regards to these
7 condos?

8 A. At least 53 that I have found records of, but at least 53.

9 Q. Now, is that 53 just on these condos, or does that include
10 some other properties?

11 A. Including other properties.

12 Q. Okay. And how much did you typically charge for your
13 appraisals?

14 A. Depending on what kind of appraisal they were, if they
15 were condominiums, a lot of times -- well, you need a rent
16 schedule and an operating income statement, so those are \$50
17 apiece. Appraisals are 450. Some appraisals are 350. If they
18 were FHA appraisals, they were 450. So they varied depending
19 on what type of appraisal they were.

20 Q. Okay. Now, were you always paid separately for each
21 individual appraisal, or did you sometimes get paid in bulk for
22 multiple appraisals?

23 A. Paid in bulk for multiple appraisals, sometimes.

24 Q. Okay. I'd like to direct your attention to the exhibit in
25 front of you, Defendant's Exhibit 51-05-Z. And just take a

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1 moment to look that over. We'll start with the first page and
2 see if you recognize that.

3 A. Yes.

4 Q. Do you recognize it?

5 A. It's an invoice.

6 Q. Okay. And who is the invoice from?

7 A. Pinnacle Appraisal Group.

8 Q. Okay. And so is that in regards to an appraisal that was
9 done by your company?

10 A. Yes.

11 Q. Okay. And do you know who the specific appraiser was on
12 this property?

13 A. It was me.

14 Q. Okay. And the total amount that was charged to do this
15 appraisal?

16 A. 400 for the appraisal, 50 for the rent schedule and 50 for
17 the operating income statement, so 500 total.

18 Q. Okay. And have you had a chance to review this appraisal
19 in the last few days?

20 A. Yes. I looked at it.

21 Q. Okay. And so in terms of the -- let's talk about the
22 value that you came up with. Sorry. Let me just grab a page
23 that's on -- looks like it's about Page 6 of the appraisal.

24 The heading says "summary of salient features."

25 A. Oh, okay.

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1 Q. Do you see that section?

2 A. Uh-huh.

3 Q. Okay. And down near the bottom do you see where it says
4 "final estimate of value"?

5 A. Yes.

6 Q. Okay. And what was the value that you came up with?

7 A. 445.

8 Q. Okay. Now, do you know Mr. Robert Brooks?

9 A. Yes.

10 Q. And how did you get to know him?

11 A. He ordered appraisals from my company.

12 Q. Okay. And did he pay you for these appraisals?

13 A. He did.

14 Q. Okay. All right. Did he ever pay you any money on the
15 side to do other work besides these appraisals?

16 A. No.

17 Q. Okay. Did he ever try to offer to pay you extra money to
18 inflate your appraisals?

19 A. No.

20 Q. Did he ever even insinuate that, you know, you better give
21 him the value that you want on these appraisals?

22 A. No.

23 Q. If he had tried to do that, would you have agreed to?

24 A. No.

25 Q. And were you familiar with other condominiums that were in

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1 the area around that time?

2 A. Yes.

3 Q. Are you familiar with the condo unit by the name of the
4 Azure?

5 A. I don't recall.

6 Q. Do you recall another condo unit going up close by the
7 Topaz units?

8 A. Oh, yes, they were just building it. Yes, I didn't
9 remember the name.

10 Q. Okay. So it had not been yet completed by the time you
11 did your appraisal; is that right?

12 A. I don't believe so.

13 Q. Okay. Do you have any idea what the value of those condos
14 were?

15 A. You know, I don't know. I don't think there were any
16 sales yet because they were -- they weren't finished.

17 Q. Do you recall seeing even the sales price of those condos,
18 or no?

19 A. I don't.

20 MR. GORDON: Okay. Pass the witness.

21 THE COURT: Cross.

22 **CROSS-EXAMINATION**

23 BY MR. HARRIS:

24 Q. Good morning, Ms. Coleman. My name is Bill Harris. I
25 represent the United States. We've never met or spoken,

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1 correct?

2 A. Correct.

3 Q. Now, you testified that you've been working as an
4 appraiser from somewhere around '03 to '09. Why did you move
5 on from appraisal work?

6 A. In 2009 there was -- actually, I believe the government
7 made it so that appraisal -- loan officers could not -- could
8 no longer order appraisals directly from appraisers, because
9 they were putting a wall between so there would be no, I guess,
10 whatever; so that loan people couldn't tell the appraisers to
11 get a certain value.

12 So at that time you had to get on a list in order
13 to -- a rotation list. I had, you know, cultivated my clients.
14 You know, I did good customer service. And now, one day, that
15 day that happened, they no longer could order appraisals from
16 me. They had to order them from the list of appraisers. I
17 could do the appraisals.

18 Q. Excuse me. The list of appraisers that the banks had
19 approved; that the lenders had approved?

20 A. No. That Fannie Mae, Freddie Mac said you have to -- if
21 this appraiser doesn't come from this list that we've created,
22 we won't buy the loan. And as you know, they buy -- they
23 bought 95 percent of all loans. And so mortgage people
24 followed those rules. And so, overnight, my business was over.
25 So I looked for another job so I could, you know, sustain my

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1 life. And so that's why I work at the law office now.

2 Q. Okay. Prior to that, Pinnacle -- prior to you taking over
3 Pinnacle, the principal had been a fellow named Chris Bartlett,
4 correct?

5 A. Correct.

6 Q. And you were his trainee until April 5th of '07, at which
7 time you became certified, correct?

8 A. Yes.

9 Q. Now, you were saying that your work for Mr. Brooks'
10 properties were from the summer of '07, pretty much through the
11 end of the year.

12 MR. HARRIS: If I may approach the witness?

13 THE COURT: Yes.

14 BY MR. HARRIS:

15 Q. I'm not going to mark this as an exhibit at this time.
16 I'm just going to show you a check and show you the date and
17 ask you if perhaps seeing this refreshes your recollection now,
18 yeesh, almost five years later, that it was much earlier in the
19 year?

20 A. Possibly so. I assumed it was around July, but I don't
21 know.

22 Q. March -- this indicates March 8th of '07 that you're
23 receiving money from Texas Residential Properties, correct?

24 A. It does.

25 Q. And I believe you said your only work was as an appraiser?

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1 A. Right. That is correct.

2 Q. Okay. Now, at that time you were not yet certified as an
3 appraiser, correct?

4 A. Correct.

5 Q. You were working under Mr. Coleman?

6 A. No.

7 Q. I'm sorry. You are Ms. Coleman. You were working under
8 Mr. Bartlett's license?

9 A. Correct.

10 Q. Now, you had access to the computer, such that you could
11 put signatures electronically on appraisals, correct?

12 A. Correct, correct.

13 Q. And, in fact, you did that with several appraisals that
14 you had done for Mr. Brooks without Mr. Bartlett's review or
15 knowledge?

16 A. Well, he knew that we were doing that. He didn't get to
17 review them.

18 Q. He did not get to review them. So you submitted them
19 without his review, correct?

20 A. Correct. But permission.

21 Q. Understood. Now, you went to the Topaz condominiums and
22 met with Mr. Brooks on two occasions, correct?

23 A. I believe so.

24 Q. And that was to review approximately 30 appraisals,
25 correct -- or 30 units for appraisals?

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1 A. Right. Correct.

2 Q. Okay. And at the Topaz Mr. Brooks gave you three HUD-1s
3 of condos that had recently sold in Topaz, correct?

4 A. I believe so.

5 Q. And those each showed that they had sold for approximately
6 \$445,000, correct?

7 A. Correct.

8 Q. He also gave you copies of appraisals that had been
9 completed by other appraisers, including Casey Vaughn, correct?

10 A. I don't recall that.

11 Q. You don't recall receiving other appraisals, or you don't
12 recall the name?

13 A. Either.

14 Q. You don't recall receiving appraisals?

15 A. I don't.

16 Q. If, indeed, on April 15th of 2009 you were interviewed by
17 the FBI and IRS, excuse me, and told them that he had provided
18 you with those appraisals, you would not dispute that?

19 A. No. I mean, I just don't recall.

20 Q. Okay. Now, in preparing an appraisal, you are supposed to
21 research -- you're supposed to be independent, correct?

22 A. Absolutely.

23 Q. And you're supposed to research independently who the
24 titleholder of record of real estate is, correct?

25 A. I don't understand the question. What do you mean

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1 research independently?

2 Q. You're not supposed to take somebody's word for it.

3 You're supposed to actually check the county records?

4 A. Okay.

5 Q. Correct?

6 A. Yes.

7 Q. And, indeed, you did that, and you found that the Dallas
8 County records listed Pearl Street Residential as the owner of
9 the properties, correct?

10 A. I don't recall that, but I -- is it -- is it -- I assume
11 so.

12 Q. Well, take a look at your appraisal, and I think you're
13 going to find that it shows Texas Residential Properties is the
14 seller. And the reason that you put that is that because,
15 although you had seen Pearl Street Residential, Mr. Brooks
16 assured you that he had recently purchased the properties, and
17 it just wasn't showing up. Do you recall that?

18 A. I don't. But the HUD-1 would tell you who the owner is.
19 And sometimes it takes months for those types of things to get
20 into the system. And so that's not -- that's not unusual.

21 Q. Unusual. So, again, if you told the federal agents who
22 interviewed you in March -- I'm sorry -- in April of '09 that,
23 indeed, that's what occurred, you would not dispute that?

24 A. No.

25 Q. Correct?

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1 A. I would not.

2 Q. Isn't it a fact that you also determined the appraised
3 values at 460,000 for the condo units based on the HUD-1
4 settlement statements that Mr. Brooks provided, the appraisals
5 that Mr. Brooks provided and by pulling four comparables off
6 the MLS, two of which were Topaz Townhomes units, two of which
7 were from the Plaza at Turtle Creek?

8 A. So how many were there total?

9 Q. Four. Four comparables.

10 A. Plus the three HUD-1s?

11 Q. Plus the HUD-1s.

12 A. So there were seven comparables?

13 Q. Yes.

14 A. Yes. So that -- I would agree with that. Are we talking
15 about this appraisal that I have in front of me? Because --

16 Q. I'm not -- we didn't cover with Mr. Gordon what property
17 that appraisal is for. So could you tell me, please?

18 A. 5105.

19 Q. Condo 5105. Let me approach you with a different one.
20 Just, again, not -- yeah, let's go ahead and mark this as an
21 exhibit, please.

22 (Discussion off the record)

23 BY MR. HARRIS:

24 Q. Let me go ahead and hand you the appraisal. We'll mark it
25 momentarily and bring it to you. And I'll ask you if this is

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1 an appraisal that you prepared for condo unit number 5102, the
2 borrower -- purchaser/borrower being Bettie Artis?

3 A. Yes.

4 Q. And let's take a look at -- let's wait till we get it
5 marked and entered before we -- we're going to mark it as
6 Government's Exhibit 35-15. If you'll place it flat, please.

7 All right. So this is an appraisal that's dated
8 what, please?

9 A. 3 of '07.

10 Q. 3 of '07. So this is during that period before you became
11 licensed, correct?

12 A. No. I did have a trainee license.

13 Q. Trainee license, but you weren't authorized to sign off on
14 your own without Mr. Bartlett?

15 A. Right.

16 Q. Okay. And it shows Pinnacle Appraisal Group to Adkins
17 Financial Group; contact, Yvonne Salazar; as I indicated,
18 purchaser/borrower, Bettie -- shoot. I'm getting ahead of
19 myself. Real quick again. Looking at the thing in wide view,
20 this one lacks the exhibit sticker, which will be right here.
21 Invoice, March of '07, correct?

22 A. Yes.

23 Q. To Adkins Financial Group; attention, Yvonne Salazar,
24 correct?

25 A. Yes.

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Jennifer Coleman - Cross

1 Q. And it's lender, Adkins Financial Group;
2 purchaser/borrower, Bettie Artis; unit 5102, correct?

3 A. Yes.

4 Q. Now, I was asking you about the comparables that you used.
5 So if we could please go to -- well, first, I was asking about
6 the owner of public record on the condominiums. So if we go
7 several pages in.

8 A. It's Page 6.

9 Q. Thank you.

10 A. Welcome.

11 Q. We show owner of public record as Texas Residential
12 Properties, correct?

13 A. Yes.

14 Q. And do you recall that that was based on a HUD-1 given to
15 you by Mr. Brooks in essence saying, see, look, I already
16 bought it?

17 A. It's likely.

18 Q. If we go to Page 7, towards the bottom, there's a portion
19 that talks about your research, correct?

20 A. Correct.

21 Q. And in this portion, down toward the bottom, it says: My
22 research did not reveal any prior sales or transfers of the
23 subject property for the three years prior to the effective
24 date of this appraisal. Correct?

25 A. Yes.

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1 Q. Similarly, right below it, it says: My research did not
2 reveal any prior sales or transfers of the comparable sales for
3 the year prior to the date of sale of the comparable sale,
4 correct?

5 A. Correct.

6 Q. So that means neither condo -- your research, your
7 certifying to this lender is that neither 5102, nor the two you
8 used as comparables had sold certainly within the prior year
9 and certainly within -- you know, for the condo the three
10 years?

11 A. Sure.

12 Q. This jury has seen evidence that Pearl Street Residential
13 sold the Topaz condo in question, 5102, as well as the two
14 units you're using as comparable, within months of this
15 appraisal. Your appraisal is incorrect, is it not?

16 A. It is.

17 Q. Let's take a look at Page 11. And is that your electronic
18 signature?

19 A. Yes.

20 Q. And is that Mr. Bartlett's electronic signature?

21 A. Yes.

22 Q. And you caused his to appear on there, correct?

23 A. With his approval, yes.

24 Q. With his approval. Did he know the details of how you had
25 prepared this report?

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1 A. No.

2 Q. No. Let's go to the very next page when we talk about the
3 comparables. And the comparables that you're using -- first,
4 we look -- and the first column down is the -- the first couple
5 of columns down is the subject property, correct?

6 A. Correct.

7 Q. The next two columns is comparable sale number 4, which is
8 not a Topaz unit. It's something at Plaza at Turtle Creek,
9 correct?

10 A. Correct.

11 Q. And ditto with comparable 5, correct?

12 A. Correct.

13 Q. Now, just looking at it in terms of homeowner's
14 assessment, for the subject property it's \$303, correct?

15 A. Correct.

16 Q. For the first Plaza at Turtle Creek it's \$865, correct?

17 A. Correct.

18 Q. So more than twice. And then for comparable number 5,
19 it's over -- well over -- well, change over a thousand dollars,
20 shall we say?

21 A. Yes.

22 Q. When we go to Page 17, we analyze the comparable rents,
23 correct?

24 A. Correct.

25 Q. What the market will bear for renting this property out,

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1 correct?

2 A. Correct.

3 Q. And for comparable 1, let's go a little bit wider. And
4 again, this is the same two column, kind of two column, kind of
5 two column, kind of two column for the three comparables,
6 correct?

7 A. Yes.

8 Q. And each of these comparables are showing rents ranging
9 from 3500 on Comp 1 to 3800 on Comp 2, correct?

10 A. Correct.

11 Q. We also have a comparison of square footage, showing Topaz
12 at unit 5102 is just over a thousand square feet. Comparable 1
13 is just shy of 2000 square feet. Comparable 3 is -- or I'm
14 sorry -- Comparable 2 is a little larger than Topaz. But Comp
15 3 is -- I need to move over -- is well over -- is over 2,000
16 square feet, so nearly twice the size, correct?

17 A. Correct.

18 Q. Now, I mentioned that you had also used two MLS listings.

19 A. Yes.

20 Q. And do you recall telling the agents at the time of the
21 interview that they were for townhome units numbers 7203 and
22 7202?

23 A. Well, I don't recall telling them that, but it's right
24 here. So I did.

25 Q. It's right there in the government exhibit we just went

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1 through, correct?

2 A. Correct. Yeah, Page 8.

3 Q. So let's briefly look at what you may have received -- not
4 what you may have received, but just to remind the jury what
5 properties we are talking about. Excuse me. Even at that I
6 misstate, because I don't believe the jury has actually seen
7 these before.

8 Let's go to Government's Exhibit 26-02, which you
9 would not -- which you would have seen as a comparable. And
10 can you see it on the screen?

11 A. No.

12 Q. We may have to dig out -- if you would please, Mr. Vigil,
13 dig out 26-02, 26-03, 25-02, 25-03.

14 MR. HARRIS: Your Honor, I neglected -- I marked, I
15 identified, we talked about; I neglected to offer Government's
16 Exhibit 35-15, the appraisal report in evidence.

17 THE COURT: Any objection?

18 MR. GORDON: No objection, Your Honor.

19 THE COURT: Admitted.

20 (Government's Exhibit No. 35-15 admitted)

21 BY MR. HARRIS:

22 Q. Okay. If I may briefly question from here. First, 25-02
23 is a HUD-1 for condo unit 7202, correct?

24 A. May I look at it?

25 Q. Sure, please.

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1 A. Yes.

2 Q. And that's one of the ones that you were given by -- one
3 of the ones you found in the MLS, correct?

4 A. Yes.

5 Q. Okay. The HUD-1 indicates a contract sales price of
6 460,000, correct?

7 A. Correct.

8 Q. So is it fair to say that you took it that if another
9 comparable unit in the same development is going for 460,
10 similar square footage, et cetera, then 5102 would be worth
11 460? Is it a factor?

12 A. Yeah. Yeah, absolutely.

13 Q. Okay.

14 A. Did you say 402? 7202?

15 Q. 7202?

16 A. Okay. Would be the same as --

17 Q. As 5102?

18 A. Okay. Yes, yes.

19 Q. Now, I believe you indicated that you also reviewed an
20 appraisal for that unit as well, correct?

21 A. Possibly.

22 Q. And let's take a look at Government's Exhibit 25-03. And
23 just in its wide view this is a standard form for the
24 appraisal, correct?

25 A. Yes.

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1 Q. And not to bother zooming in, but in the upper middle
2 portion it's for unit 7202, correct?

3 A. Yes.

4 Q. The bottom line on this one is going to be toward the
5 back, correct, before all the plats and stuff?

6 A. Are you talking about the value?

7 Q. Yes, ma'am.

8 A. No, it's before that.

9 Q. Okay.

10 A. Here.

11 Q. 460,000 on the third page of the exhibit in the lower
12 right, correct?

13 A. Correct.

14 Q. And for the jury's benefit, this appraisal was prepared by
15 a Mark Whisenhunt, or at least that's the name that appears,
16 correct?

17 A. Yes.

18 Q. Why are you snickering?

19 A. Because he was my first sponsor. That's funny.

20 Q. Small world?

21 A. Very small world.

22 Q. Okay. Let's take a look at Exhibit 26-02, which is the
23 HUD-1 for unit 7203, the other Topaz that you used as an MLS
24 comparable.

25 A. Right. Correct.

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1 Q. Multilist Service, MLS, right?

2 A. Multiple listing.

3 Q. Thank you.

4 A. Sure.

5 Q. This one, likewise, indicates a contract sales price of
6 460, correct?

7 A. Correct.

8 Q. And going to Government's Exhibit 26-03, it, too, is
9 backed by an appraisal showing 460,000 as its value. And this
10 one also appears to be prepared by Mark Whisenhunt, correct?

11 A. Correct.

12 Q. So having been given these HUD-1s by Mr. Brooks; possibly
13 other appraisals for the units done by Mr. Brooks; you,
14 yourself, finding in the MLS recent sales in the same
15 ballpark -- actually, not the same ballpark, same price; you
16 felt comfortable using 460,000 as the valuation, correct?

17 A. Based on the MLS and comparables, yes.

18 Q. Now, you did not go into the sales office at Topaz, did
19 you?

20 A. I believe I did.

21 Q. Did you see that those units were going for -- very
22 comparable units were going in the mid-200 to not more than
23 \$300,000 price range?

24 A. I don't think they had them listed.

25 Q. You don't think they had them listed. In any event, you

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Jennifer Coleman - Redirect

1 don't recall seeing that, correct?

2 A. No.

3 MR. HARRIS: If I may have a moment, please, Your
4 Honor?

5 THE COURT: All right.

6 MR. HARRIS: Pass the witness.

7 THE COURT: Redirect.

8 **REDIRECT EXAMINATION**

9 BY MR. GORDON:

10 Q. Did Mr. Brooks go over those comparables with you?

11 A. What are you talking -- like on --

12 Q. Did he tell you what comparables to pick, what to do?

13 A. Absolutely not, no.

14 Q. And do people sometimes make mistakes in reports
15 legitimately?

16 A. All the time.

17 Q. Okay. Did you make these mistakes because Mr. Brooks
18 directed you to put those things in there or just on your own?

19 A. Absolutely not.

20 Q. And I believe on the -- one of the papers that was put up
21 there's paperwork sent to you by Yvonne. Does that ring a
22 bell?

23 A. Yes.

24 Q. Okay. Do you recall Yvonne Salazar Quintanilla?

25 A. Yes.

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Jennifer Coleman - Redirect

1 Q. And do you recall Pro Processing?

2 A. Pro Processing?

3 Q. Pro Processing.

4 A. No.

5 MR. GORDON: Okay. All right. Pass the witness.

6 THE COURT: Recross.

7 MR. HARRIS: No, thank you.

8 THE COURT: Thank you, ma'am. You may step down.

9 Next witness?

10 THE WITNESS: Do these stay here?

11 THE COURT: Yes. Why don't you leave those there for
12 right now. Thank you, ma'am.

13 THE WITNESS: You're welcome.

14 MR. GORDON: Defense calls Karen Coleman, Your Honor.

15 THE COURT: All right.

16 (Witness enters courtroom)

17 MR. GORDON: Actually, Judge, can I have just a
18 moment?

19 THE COURT: Yes.

20 Ma'am, come on up here for right now, please. Right
21 up here. Hi.

22 THE WITNESS: Hi.

23 THE COURT: You can have a seat for right now, I
24 think.

25 MR. GORDON: Actually, Your Honor, we are not going

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1 to call Ms. Coleman at this time, actually.

2 THE COURT: Oh, you're not going to call her?

3 MR. GORDON: No. We talked --

4 THE COURT: Okay. All right. Well, very well. Ms.
5 Coleman, you're done.

6 THE WITNESS: Okay.

7 THE COURT: Thank you.

8 All right. Mr. Gordon, do you wish to call another
9 witness?

10 MR. GORDON: No, Your Honor.

11 THE COURT: And so does the defense rest?

12 MR. GORDON: Yes, Your Honor.

13 THE COURT: All right. The defense having rested,
14 Mr. Harris, do you wish to call any rebuttal witnesses?

15 MR. HARRIS: No, Your Honor. The United States rests
16 and closes.

17 THE COURT: All right. The defense closes, Mr.
18 Gordon?

19 MR. GORDON: Yes, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, you
21 have now heard the evidence portion of the trial. And while --
22 we'll need to take a short break here to get set up for the
23 closing statements. And first, I will be reading to you your
24 final instructions.

25 While we do that, you-all please keep in mind your

1 instructions. Even though you've heard all of the evidence, do
2 not begin talking about the case until after the closing
3 statements and all of you are in the jury room together to
4 deliberate as a collective body. So with that reminder,
5 you-all will be in recess for 15 minutes, and then we'll have
6 the closing statements. Thank you.

7 (Jury leaves courtroom)

8 THE COURT: All right. You may be at ease. Be
9 seated. While Ms. Noble is getting the charges distributed,
10 Mr. Gordon, just pro forma, do you want to renew your motion
11 for acquittal?

12 MR. GORDON: Yes, Judge.

13 THE COURT: All right. And that motion as to Count 6
14 is granted and as to all other counts is denied. So that takes
15 care of that.

16 Anything else right now before we take a short break
17 before you-all begin your arguments, Mr. Gordon?

18 MR. GORDON: No, Your Honor. I don't think so.

19 THE COURT: And, Mr. Harris, first of all, anything
20 further at this time?

21 MR. HARRIS: No, Your Honor.

22 THE COURT: Do you think you're going to use the full
23 hour?

24 MR. HARRIS: I'm a windbag, yeah.

25 THE COURT: That's fine. I'm just trying to -- we

1 might need to take -- give the jury a break if we're going to
2 use -- Mr. Gordon, you think you're going to use a full hour?

3 MR. GORDON: No, Your Honor.

4 THE COURT: Okay. Well, my hope is, read the charge,
5 which obviously is going to take a while because it's 30 pages,
6 and then to go straight in and get the arguments done, and then
7 they can have a lunch break.

8 MR. HARRIS: Yeah. I don't know that I'll be 45 and
9 15. I may be a little shorter on the front end and then add a
10 little bit on the back end.

11 THE COURT: All right. Well, we'll play it by ear.
12 But hopefully -- that way it doesn't lose the flow for the jury
13 if we can do it without taking a break.

14 MR. HARRIS: But if I may ask for a notice at the
15 40-minute mark --

16 THE COURT: Okay.

17 MR. HARRIS: -- I would appreciate that, even though
18 there's a clock.

19 THE COURT: All right. And, Mr. Gordon, you want a
20 warning at -- what? 50, if you use that long.

21 MR. GORDON: Yes, Judge. I appreciate that.

22 THE COURT: Okay. All right. Well, we'll be in
23 recess for about ten more minutes. You-all get set up, move
24 the lectern, take a restroom break, and then we'll start.
25 Thank you.

1 (Recess at 9:39 a.m. until 9:52 a.m., jury out, defendant
2 present, open court)

3 THE COURT: You may be seated. We had sent notice
4 out yesterday to the other lawyers involved and the other
5 defendants about having closing statements today. And Mr. Wood
6 is here, of course. I think we said about 10:00. So we may
7 have some other lawyers come in from time to time during the
8 closing statement.

9 All right. Everyone's present. Jury's ready. All
10 right. For the record, before we bring the jury in, Mr.
11 Harris, anything else for the United States?

12 MR. HARRIS: No, Your Honor.

13 THE COURT: Mr. Gordon, for the defense?

14 MR. GORDON: No, Your Honor.

15 MR. HARRIS: Actually --

16 MR. GORDON: No, I'm sorry.

17 MR. HARRIS: Yes, Your Honor, although I'm not sure
18 that it makes a technical matter to the jury instructions, but
19 I see on Page 13 --

20 THE COURT: 13. Oh, man. Don't tell me. All right.
21 Go ahead.

22 MR. HARRIS: Italic, fifth, the scheme affected a
23 financial -- let me get to the microphones. The scheme
24 affected a financial institution in Count 2 and Count 8. The
25 parties have stipulated for purposes of Count 2 that Supreme

1 Mortgage Group --

2 THE COURT: Okay. Hold on. I'm not -- did you say
3 Page 13?

4 MR. HARRIS: Page 13 of the charge.

5 THE COURT: Oh, okay. Well, wait a minute. Maybe
6 I'm in the indictment.

7 MR. HARRIS: You're probably in the indictment.

8 THE COURT: Yes, yes, yes. Hold on. Okay. Page 13
9 of the charge. Go ahead.

10 MR. HARRIS: Page 13 of the charge, the italic fifth
11 element.

12 THE COURT: Okay.

13 MR. HARRIS: That the scheme affected a financial
14 institution in Count 2 and Count 8. The parties have
15 stipulated for purposes of Count 2 that Supreme Mortgage Group
16 in San Antonio, Texas is a financial institution.

17 At that point in time Supreme Mortgage would not have
18 fallen in 18 USC Section 12's definition of a financial
19 institution for purposes of the Title 18 crimes. So it
20 really -- it's really only a matter that affects sentencing.

21 THE COURT: Okay.

22 MR. HARRIS: It really doesn't matter as far as the
23 true element of the offense as to the jury.

24 THE COURT: And that was just discovered now, after
25 we have gone through all of this. Is there any problem with

1 the charge? Okay.

2 MR. HARRIS: There is no problem with the charge, but
3 that is a technical item --

4 THE COURT: Okay. Well --

5 MR. HARRIS: -- in that, you know, were he only to be
6 convicted of Count 2, it would be a lesser sentence than if
7 Supreme Mortgage were a financial institution.

8 THE COURT: Okay.

9 MR. HARRIS: That's all.

10 THE COURT: Well, do you think -- we can't go back
11 right now and white them all out. I'm inclined to just go
12 ahead and read it, with the understanding that it doesn't
13 matter as far as what the jury is doing.

14 MR. HARRIS: It does not matter as to what the
15 jury --

16 THE COURT: Because then, otherwise, if I skip over
17 it, they'll question, well, why didn't you read that and so
18 forth, just -- it makes it more confusing.

19 MR. HARRIS: But I'd like a response from the defense
20 on that issue.

21 THE COURT: All right. Mr. Gordon, for the record,
22 do you have any objection to the Court going ahead and reading
23 it, with the understanding that it will be taken up later to
24 the extent it may affect other issues?

25 MR. GORDON: Judge, if it's not technically accurate,

1 I feel like I have to object for the record on that.

2 THE COURT: All right. Mr. Harris, what do you want
3 to do? I don't think it -- I think it's harmless error, if
4 it's error at all. But it will take us another 30 minutes to
5 do this.

6 MR. HARRIS: I also concur that it is an
7 immaterial -- well, were it in the indictment -- even in the
8 indictment, since we charged 1341, if that count were to have
9 said it, it would be an immaterial variance. Had we charged
10 1344, it would be a fatal flaw. We have charged 1341 as to
11 that count; ergo, had it been named as a financial institution
12 in the count, it would be an immaterial variance; ergo, we
13 believe that the charge is an immaterial variance.

14 THE COURT: Okay. And even if it is not immaterial,
15 that doesn't do away with all the other -- doesn't taint all
16 the other instructions?

17 MR. HARRIS: Not at all.

18 THE COURT: All right. The objection is noted and
19 overruled.

20 Now, was there something else, Mr. Gordon, you wanted
21 to raise?

22 MR. GORDON: Yes, Judge. I think I neglected to
23 officially offer into evidence Defendant's Exhibit 51-05-Z.
24 That was the appraisal report my witness was just looking at.
25 So I offer that into evidence.

1 MR. HARRIS: Without objection.

2 THE COURT: Admitted.

3 (Defendant's Exhibit No. 51-05-Z admitted)

4 THE COURT: All right. Okay. Now we're ready.

5 (Jury enters courtroom)

6 THE COURT: You may be seated.

7 Ladies and gentlemen, before I give you the Court's
8 charge, let me make a few comments and observations. First of
9 all, you-all have been very attentive. There have been many
10 comments from court observers and people involved in this case
11 about how attentive you have been and what a good jury this is.
12 And all of our juries are good, but this one is especially good
13 in the sense that this is a very complicated case, obviously.
14 It's not your run-of-the-mill, two or three day case that we
15 often see. And so we appreciate your attentiveness to all of
16 this.

17 Secondly, as I told you during the voir dire
18 selection, that this will be the production and presentation
19 like a Broadway play, like a drama. And I think you have seen
20 good quality on that presentation. And that has been aided in
21 large part by the support staff for both the lawyers and the
22 Court who have put all this together. As you can imagine, all
23 of this doesn't just happen. It takes a lot of people behind
24 the scenes, just like in a movie production or a Broadway play
25 production. And these folks that you have seen, although their

1 participation has been silent, they don't get to get up and ask
2 questions or make speeches. But without them and the support
3 that they've given to the people presenting, this would not
4 have gotten to this point.

5 At this point in the production it's the Court's
6 responsibility to give you your final instructions. And then
7 Mr. Harris and Mr. Gordon will summarize for you why they
8 believe you should answer the questions for their side of the
9 case.

10 Each of you has a copy of the Court's final
11 instructions for your use during your deliberations and as you
12 are hearing the closing statements by the lawyers.

13 I will ask at the end of the case that -- you may, if
14 you like, take those home with you. They will be your
15 property. The only difference between the one that will be the
16 official record of the Court and the one that I'm reading from
17 and the one that you have -- the only difference is that Ms.
18 Vela has put the district clerk's file mark in this corner.
19 This is the one that will be signed and become an official
20 verdict of the Court once you have reached your unanimous
21 verdict.

22 So if you will, follow along with me, and I will read
23 this to you.

24 **COURT'S INSTRUCTIONS**

25 THE COURT: Members of the jury, in any jury trial

1 there are, in effect, two judges. I am one of the judges, and
2 the other is you, the jury. It is my duty to preside over the
3 trial to decide what evidence is proper for your consideration.
4 It is also my duty at the end of the trial to explain to you
5 the rules of law that you must follow and apply in arriving at
6 your verdict.

7 First, I will give you some general instructions
8 which apply in every case, for example, instructions about
9 burden of proof and how to judge the believability of
10 witnesses. Then I will give you some specific rules of law
11 about this particular case. And, finally, I will explain to
12 you the procedures you should follow in your deliberations.

13 You, as jurors, are the judges of the facts. But in
14 determining what actually happened -- that is, in reaching your
15 decision as to the facts -- it is your sworn duty to follow all
16 of the rules of law as I explain them to you.

17 You have no right to disregard or give special
18 attention to any one instruction or to question the wisdom or
19 correctness of any rule that I may state to you. You must not
20 substitute or follow your own notion or opinion as to what the
21 law is or ought to be. It is your duty to apply the law as I
22 explain it to you, regardless of the consequences.

23 It is also your duty to base your verdict solely upon
24 the evidence, without prejudice or sympathy. That was the
25 promise you made and the oath you took before being accepted by

1 the parties as jurors. And they have the right to expect
2 nothing less.

3 The indictment, or formal charges against the
4 defendant, are not evidence of guilt. Indeed, the defendant is
5 presumed by the law to be innocent. The law does not require
6 the defendant to prove his innocence or produce any evidence at
7 all. And no inference whatever may be drawn from the election
8 of the defendant not to testify. The government has the burden
9 of proving the defendant guilty beyond a reasonable doubt. And
10 if it fails to do so, you must acquit the defendant.

11 While the government's burden of proof is a strict or
12 heavy burden, it is not necessary that the defendant's guilt be
13 proved beyond all possible doubt. It is only required that the
14 government's proof exclude any reasonable doubt concerning the
15 defendant's guilt.

16 A reasonable doubt is a doubt based upon reason and
17 common sense, after careful and impartial consideration of all
18 the evidence in the case. Proof beyond a reasonable doubt,
19 therefore, is proof of such a convincing character that you
20 would be willing to rely and act upon it without hesitation in
21 the most important of your own affairs.

22 As I told you earlier, it is your duty to determine
23 the facts. In doing so, you must consider only the evidence
24 presented during the trial, including the sworn testimony of
25 the witnesses and the exhibits. Remember that any statements,

1 objections or arguments made by the lawyers are not evidence.
2 The function of the lawyers is to point out those things that
3 are most significant or most helpful to their side of the case,
4 and in so doing to call your attention to certain facts or
5 inferences that might otherwise escape your notice. In the
6 final analysis, however, it is your own recollection and
7 interpretation of the evidence that controls in the case. What
8 the lawyers say is not binding upon you.

9 During the trial I may have sustained objections to
10 certain questions and exhibits. You must disregard those
11 questions and exhibits entirely. Do not speculate as to what
12 the witness would have said if permitted to answer the question
13 or as to the contents of an exhibit. Also, certain testimony
14 or other evidence may have been ordered stricken from the
15 record, and you may have been instructed to disregard this
16 evidence. Do not consider any testimony or other evidence
17 which has been stricken in reaching your decision.

18 Your verdict must be based solely on the legally
19 admissible evidence and testimony. Also, do not assume from
20 anything I may have done or said during the trial that I have
21 any opinion concerning any issues in this case. Except for the
22 instructions to you on the law, you should disregard anything I
23 may have said during the trial in arriving at your own findings
24 as to the facts.

25 While you should consider only the evidence, you are

1 permitted to draw such reasonable inferences from the testimony
2 and exhibits as you feel are justified in the light of common
3 experience. In other words, you may make deductions and reach
4 conclusions that reason and common sense lead you to draw from
5 the facts which have been established by the evidence.

6 In considering the evidence, you may make deductions
7 and reach conclusions which reason and common sense lead you to
8 make, and you should not be concerned about whether the
9 evidence is direct or circumstantial.

10 Direct evidence is the testimony of one who asserts
11 actual knowledge of a fact, such as an eyewitness.
12 Circumstantial evidence is proof of a chain of events and
13 circumstances indicating that something is or is not a fact.
14 The law makes no distinction between the weight you may give to
15 either direct or circumstantial evidence.

16 I remind you that it is your job to decide whether
17 the government has proved the guilt of the defendant beyond a
18 reasonable doubt. In doing so you must consider all of the
19 evidence. This does not mean, however, that you must accept
20 all of the evidence as true or accurate. You are the sole
21 judges of the credibility or believability of each witness and
22 the weight to be given the witness' testimony.

23 An important part of your job will be making
24 judgments about the testimony of the witnesses who testified in
25 this case. You should decide whether you believe all or any

1 part of what each person had to say and how important that
2 testimony was.

3 In making that decision, I suggest that you ask
4 yourself a few questions. Did the person impress you as
5 honest? Did the witness have any particular reason not to tell
6 the truth? Did the witness have a personal interest in the
7 outcome of the case? Did the witness have any relationship
8 with either the government or the defense? Did the witness
9 seem to have a good memory? Did the witness clearly see or
10 hear the things about which he or she testified? Did the
11 witness have the opportunity and ability to understand the
12 questions clearly and answer them directly? Did the witness'
13 testimony differ from the testimony of other witnesses?

14 These are a few of the considerations that will help
15 you determine the accuracy of what each witness said. Your job
16 is to think about the testimony of each witness you have heard
17 and decide how much you believe of what each witness had to
18 say.

19 In making up your mind in reaching a verdict, do not
20 make any decisions simply because there were more witnesses on
21 one side than on the other. Do not reach a conclusion on a
22 particular point just because there were more witnesses
23 testifying for one side on that point.

24 In this case the government called as witnesses
25 alleged accomplices named as codefendants in the indictments,

1 with whom the government has entered into plea agreements
2 providing for lesser charges or a lesser sentence than the
3 codefendant would otherwise be exposed to for the offense to
4 which the codefendant pleaded guilty.

5 Such plea bargaining, as it is called, has been
6 approved as lawful and proper and is expressly provided for in
7 the rules of this Court. An alleged accomplice, including one
8 who has entered into a plea agreement with the government, is
9 not prohibited from testifying. On the contrary, the testimony
10 of such a witness may alone be of sufficient weight to sustain
11 a verdict of guilty. You should keep in mind that such
12 testimony is always to be received with caution and weighed
13 with great care. You should never convict a defendant upon the
14 unsupported testimony of an alleged accomplice unless you
15 believe that testimony beyond a reasonable doubt.

16 The fact that an accomplice has entered a plea of
17 guilty to the offense charged is not evidence of the guilt of
18 any other person. The testimony of an alleged accomplice and
19 the testimony of one who provides evidence against the
20 defendant for immunity from punishment or for personal
21 advantage or vindication must always be examined and weighed by
22 the jury with greater care and caution than the testimony of
23 ordinary witnesses. You, the jury, must decide whether the
24 witness' testimony has been affected by any of those
25 circumstances or by the witness' interest in the outcome of the

1 case or by prejudice against the defendant or by the benefits
2 that the witness has received as a result of being immunized
3 from prosecution.

4 You should keep in mind that such testimony is always
5 to be received with caution and weighed with great care. You
6 should never convict the defendant upon the unsupported
7 testimony of such a witness unless you believe that testimony
8 beyond a reasonable doubt.

9 The testimony of a witness may be discredited by
10 showing that the witness testified falsely concerning a
11 material matter or by evidence that at some other time the
12 witness said or did something or failed to say or do something
13 which is inconsistent with the testimony the witness gave at
14 this trial.

15 Earlier statements of a witness were not admitted
16 into evidence to prove that the contents of those statements
17 are true. You may consider the earlier statements only to
18 determine whether you think they are consistent or inconsistent
19 with the trial testimony of the witness and, therefore, whether
20 they affect the credibility of that witness.

21 If you believe that a witness has been discredited in
22 this manner, it is your exclusive right to give the witness --
23 the testimony of that witness whatever weight you think it
24 deserves.

25 During the trial you have heard testimony of

1 witnesses who have expressed opinions on general background
2 information on the United States tax code and the types of
3 deductions which are generally allowed and not allowed. If
4 scientific, technical or other specialized knowledge might
5 assist the jury in understanding the evidence or in determining
6 a fact in issue, a witness qualified by knowledge, skill,
7 experience, training or education may testify and state an
8 opinion concerning such matters.

9 Merely because such a witness has expressed an
10 opinion does not mean, however, that you must accept this
11 opinion. You should judge such testimony like any other
12 testimony. You may accept it or reject it and give it as much
13 weight as you think it deserves, considering the witness'
14 education and experience, the soundness of the reasons given
15 for the opinion and all other evidence in the case.

16 You will note that the indictments charge that the
17 offenses were committed on or about a specified date or dates.
18 The government does not have to prove that the crimes were
19 committed on that exact date or dates so long as the government
20 proves beyond a reasonable doubt that the defendant committed
21 the crimes on dates reasonably near the dates stated in the
22 indictments.

23 You are here to decide whether the government has
24 proved beyond a reasonable doubt that the defendant is guilty
25 of the crimes charged. The defendant is not on trial for any

1 act, conduct or offense not alleged in the indictments.
2 Neither are you concerned with the guilt of any other person or
3 persons not on trial as a defendant in this case, except as you
4 are otherwise instructed.

5 A separate crime is charged in each count of the two
6 indictments. Each count in each indictment and the evidence
7 pertaining to it should be considered separately. The fact
8 that you may find the defendant guilty or not guilty as to one
9 of the crimes charged in either indictment should not control
10 your verdict as to any other crime charged in either
11 indictment.

12 If the defendant is found guilty, it will be my duty
13 to decide what the punishment will be. You should not be
14 concerned with punishment in any way. It should not enter your
15 consideration or discussion. Now I will read to you the
16 indictments, give you my instructions with reference to the
17 essential element of the counts alleged which must be proven by
18 the government beyond a reasonable doubt before you can convict
19 the defendant of the counts of the indictments. And you will
20 have a copy of the indictment in the jury room, and I remind
21 you that the indictments are not evidence of guilt.

22 Looking at the indictment, which, of course, you have
23 seen and heard all through this trial, so I'm going to try to
24 abbreviate to the extent possible. First of all, the defendant
25 Robert Brooks, was a defendant -- was a resident of Dallas,

1 Texas and the husband of Cheryl Brooks. He was the *de facto*
2 principal of Relocation Studio, Texas Residential Properties
3 and Upscale Realty, entities in whose names he bought and sold
4 real estate.

5 He provided the startup funds for and controlled Pro
6 Processing, which prepared mortgage applications; and
7 Progressive Title & Abstract, a real estate title company
8 engaged in the business of real estate closings and
9 settlements. He provided startup funds for Bronco Mortgage and
10 Supreme Mortgage, each of which were mortgage brokers.

11 Defendant Cheryl Brooks was a resident of Dallas,
12 Texas and the wife of defendant Robert Brooks. Defendant
13 Richard Howard was a resident of McKinney, Texas, and an
14 attorney at law. He was principal of Progressive Title &
15 Abstract. A person known to the grand jury but identified here
16 only as L.C. was a resident of San Antonio and operated Supreme
17 Mortgage Group. Supreme Mortgage Group, a San Antonio, Texas
18 entity, engaged in the business of arranging residential
19 mortgage loans for customers with various mortgage lenders.

20 Defendant Yvonne Salazar Quintanilla was a resident
21 first of San Antonio, Texas, and later Dallas, Texas; principal
22 of Pro Processing, senior processor. As a mortgage processor,
23 she put together mortgage files for review by underwriters.
24 Defendant Niesha Manuel was a resident of Dallas and an
25 employee of Pro Processing. As a mortgage processor, she put

1 together mortgage files for review by underwriters.

2 Defendant Tamatha Buckholt was a resident of Dallas,
3 Texas, and an employee of Pro Processing. As a mortgage
4 processor, she put together mortgage files for review by
5 underwriters.

6 Defendant Stacey Owens was a resident of Dallas,
7 Texas and the branch manager and escrow officer of Equity Title
8 of Texas. Her duties included the preparation of the HUD-1
9 settlement statement and conducting real estate transaction
10 closings.

11 Defendant Geraldine Williams was a resident of
12 Dallas, Texas, and the branch manager and escrow officer of
13 Progressive Title & Abstract. Her duties included the
14 preparation of HUD-1 settlement statement and conducting real
15 estate transaction closings.

16 Defendant Cesar Gonzales was a resident of Dallas,
17 Texas, and an escrow officer at Progressive Title & Abstract.
18 His duties included the preparation of the HUD-1 settlement
19 statement and conducting real estate transaction closings.

20 Defendant Cedric Lester was a resident of Dallas,
21 Texas, an appraiser trainee working under the supervision of a
22 state certified appraiser.

23 Defendant Casey Vaughn was a resident of Houston,
24 Texas, and a state certified appraiser.

25 Defendant Joseph Cooper was a resident of San

1 Antonio, Texas, and a real estate agent.

2 Defendant Vadim Gazanchiyants was a resident of Las
3 Vegas, Nevada, and a property manager working on behalf of
4 Robert Brooks, the defendant.

5 Defendant George Autobee was a resident of San
6 Antonio, Texas.

7 And then these other -- Defendant Deborah Allen was a
8 resident of Bulverde, Texas, and at various times worked for
9 Adkins Financial and Defendant Cheryl Brooks.

10 And then the next few, Defendants Mauricio Betes,
11 Stephen Brott, Rick Russell, Anthony Lorek, Claude Vaughn,
12 Glynnwood Bowman, Stanley Roos, were people that -- the
13 evidence has shown some of those were the people who bought
14 these properties.

15 JPMorgan Chase was a federally-insured bank whose
16 deposits were insured by the Federal Deposit Insurance
17 Corporation. Similarly, were Wells Fargo Bank, federally
18 insured and Countrywide Bank, federally insured.

19 I'm now at paragraph 27. AmericaHomeKey; WNC
20 Mortgage Corporation; Taylor, Bean & Whittaker; Freedom
21 Mortgage; GMAC Mortgage; Option One Mortgage; Long Beach
22 Mortgage; Ampro Mortgage and Trian were companies engaged in
23 the business of mortgage lending nationwide.

24 Trian was located in Austin, Texas. Equity Title of
25 Texas was a title company engaged in the business of real

1 estate closings. Adkins Financial Group was an entity located
2 in San Antonio, Texas, engaged in the business of arranging
3 residential mortgage loans for various mortgage lenders.

4 Supreme Mortgage Group was an entity located in San
5 Antonio, Texas, engaged in the business of arranging
6 residential mortgage loans for customers with various mortgage
7 lenders.

8 Bronco Mortgage was an entity located in Houston,
9 Texas, engaged in business of arranging residential mortgage
10 loans for customers with mortgage -- with various mortgage
11 lenders. And, similarly, Alethus dba AmeriNet was that type of
12 mortgage loan, residential, entity as well.

13 Count 1 of the indictment alleges, by the grand jury,
14 that from on or about May 17, 2005, to on or about February
15 21st, 2008, in the Western District of Texas, the Northern
16 District of Texas and elsewhere, that the defendants, including
17 Robert Brooks, who is the only defendant on trial in this
18 matter, and all of these other defendants named here, and going
19 to Page 6 then, that those people and others known and unknown
20 to the grand jury did willfully and knowingly combine,
21 conspire, confederate and agree together and with each other
22 and other persons to devise a scheme to defraud one or more
23 federally-insured financial institutions and other mortgage
24 companies, and to obtain money and property by means of false
25 and fraudulent pretenses, representations and promises, and to

1 cause the use of the mails and interstate wire transfers for
2 the purpose of executing and attempting to execute their
3 fraudulent scheme.

4 It was the object of the conspiracy to obtain money
5 from mortgage proceeds through the use of simultaneous purchase
6 at or about fair market value and sale, and then sell at an
7 artificially inflated price known as a land flip or property
8 flip.

9 The conspiracy and scheme to defraud were
10 accomplished through the following means: The Defendants
11 Robert Brooks and Cheryl Brooks engaged in the business of
12 buying and simultaneously selling condos and conventional
13 residences, otherwise known as "flipping." Defendant Robert
14 Brooks, directly or with the assistance of others, located
15 residential property which was for sale. Defendant Robert
16 Brooks and others recruited persons to act as nominee buyers of
17 the properties.

18 Defendant Robert Brooks told the nominee buyers that
19 mortgages would be arranged for them; that no fees or
20 downpayments would be required from them; that they would
21 receive a large sum of money, \$10,000 plus, at the real estate
22 closing for their participation; that all closing costs would
23 be paid; that monthly mortgage payments for the first 12 months
24 of the mortgage would be paid with funds set aside at the time
25 of closing, and that occupancy use and subsequent resale of the

1 properties would be handled by Defendant Robert Brooks.

2 Defendant Robert Brooks and appraisers, or in some
3 instances appraiser trainees, specifically Defendant Cedric
4 Lester and Casey Vaughn, for -- inflated real estate
5 appraisals, which would support the amount of mortgages which
6 Defendant Robert Brooks and various others were fraudulently
7 attempting to obtain.

8 Defendant Robert Brooks and Cheryl Brooks engaged
9 Supreme Mortgage Group, Adkins Financial, Bronco Mortgage and
10 Alethus dba AmeriNet to obtain mortgage loans for condo
11 purchaser nominees and several conventional residents purchaser
12 nominees.

13 Defendant Robert Brooks and Cheryl Brooks engaged
14 Defendants Quintanilla, Manuel and Buckholt as loan processors
15 to prepare mortgage loan applications for the nominees which
16 contained false and fictitious information and material
17 omissions necessary to get the mortgage loan approved, such as
18 bank statements that materially overstated or completely
19 fabricated applicant bank balances. Other falsities included
20 income, assets, liabilities, employment, marital status and
21 intended occupancy of the properties.

22 Defendants Robert Brooks, Cheryl Brooks, Joseph
23 Cooper, Vadim Gazanchiyants, George Autobee, Deborah Allen,
24 Mauricio Betes, Stephen Brott, Rick Russell, Anthony Lorek,
25 Claude Vaughn, Glynnwood Bowman falsified information on

1 mortgage loan applications.

2 Defendants Robert Brooks, Cheryl Brooks, Quintanilla,
3 Manuel, Buckholt, Bettles, Brott, Russell, Lorek, Vaughn and
4 Roos caused moneys to be temporarily deposited into nominees'
5 bank accounts to make it appear the nominees had sufficient
6 funds on hand to qualify for the mortgage loan being sought.
7 These moneys were returned to Defendant Cheryl Brooks or
8 forwarded to yet another nominee's account, once the nominee's
9 bank had completed a verification of deposit to be submitted to
10 the mortgage lender.

11 Defendant Robert Brooks and Yvonne Quintanilla caused
12 changes to be made in commitments for title insurance documents
13 that were prepared by the title companies, closing the real
14 estate purchases. The original commitment for title insurance
15 documents listed the actual developer/seller of the real estate
16 as the owner of the record -- of record. Prior to submitting
17 the commitment documents to the mortgage company, as part of
18 the loan application package, the name of the actual
19 developer/seller was whited out and replaced with Relocation
20 Studio, Texas Residential Properties or Upscale Realty.

21 These deceptions concealed from mortgage lenders the
22 fact that Defendant Robert Brooks was simultaneously buying and
23 selling the real estate in flip transactions, and concealed the
24 true market values of the real estate from the mortgage lender.

25 Defendants Geraldine Williams and Cesar Gonzales

1 caused commitments for title insurance documents to be
2 falsified by stating that Upscale Realty was the owner of the
3 property for the subsequent sale, when, in fact, it had not yet
4 purchased the property.

5 Defendant Robert Brooks used the proceeds from the
6 purported sales to various nominees to pay for his initial
7 purchase of the real estate, to pay closing costs for both his
8 purchase and sale to the nominee, to pay the nominee's
9 downpayment, to pay the nominee for the nominee's participation
10 and to pay the mortgage for the first 12 months, after which
11 each mortgage went into default.

12 To effect the purpose and object of this conspiracy,
13 and the scheme to defraud, the following overt acts, among
14 others, were committed in the Western District of Texas, the
15 Northern District of Texas or elsewhere. Beginning on or about
16 May 17, 2005, Robert Brooks and Richard Howard conducted a
17 simultaneous flip for number XXXX XXXXXXXXXX XXXX in McKinney,
18 Texas.

19 And then it goes on, on each of these dates, and it
20 mentions Robert Brooks and other people conducting a
21 simultaneous flip. Paragraph 15 is number XXXX XXXXXXXX XXX,
22 Heath, Texas. Number -- paragraph 16 is number XXXX XXXXXX XX
23 in Dallas. On or -- and then paragraph 17, on or about
24 September 29, 2006, L.C. caused a nominee to sign a Uniform
25 Residential Loan Application.

1 On October 3rd, 2006, Stacey Owens sent documents via
2 UPS.

3 October 2nd Robert Brooks, et al, conducted a
4 simultaneous flip on number XXXX XXXXX XXXX XXXX in Dallas,
5 Texas.

6 September 13, 2006, Defendants Cooper and Autobee
7 signed a residential sales contract.

8 September 19, 2006, Defendant Autobee signed a
9 Uniform Residential Loan Application.

10 October 4, 2006, Defendants Cooper and Autobee signed
11 HUD-1 settlement statement.

12 October 4, 2006, Robert Brooks and others conducted a
13 simultaneous closing of a flip in connection with number XXXX
14 XXXXXXXXX XXXX in Heath, Texas.

15 Paragraph 24, October 4, 2006, Robert Brooks, Richard
16 Howard, Stacey Owens and Cedric Lester conducted a simultaneous
17 flip on XXXX XXXXX XXX in Rockwall, Texas.

18 November 17, 2006, Defendant Brooks and others
19 conducted the flip on Condo 7202 in Dallas, Texas.

20 And then we get into those condos with just the condo
21 numbers. The next date -- on the same date, November 17, 2006,
22 Defendant Brooks and others did the flip on 7203.

23 January 26, 2007, Defendant Robert Brooks did the
24 flip on XXXX XXXXX XX in Dallas, Texas.

25 January 18, George Autobee signed another Uniform

1 Residential Loan Application.

2 January 18, 2007, Defendant Autobee signed the HUD-1
3 settlement.

4 January 22nd, 2007, L.C. sent documents via Lone Star
5 Overnight to Defendant Stacey Owens.

6 January 26, 2007, Defendant Robert Brooks and others
7 conducted a flip in connection with Condo 7103.

8 February 26, 2007, Robert Brooks conducted -- and
9 others conducted a simultaneous flip with a house in XXXX
10 XXXXXXXXX in Heath, Texas.

11 February 27, 2007, Robert Brooks, the defendant,
12 conducted a simultaneous closing or flip on Condo 1107 in
13 Dallas, Texas.

14 March 8, 2007, Defendant Robert Brooks did a
15 simultaneous flip on Condo 4102 in Dallas, Texas.

16 March 30th, 2007, Defendant Robert Brooks and others
17 did a simultaneous closing flip on Condo 5102 in Dallas, Texas.

18 June 15, 2007, Defendants Quintanilla, Manuel and
19 Buckholt caused documents to be sent to Bulverde, Texas via DHL
20 Express.

21 June 15, Robert Brooks, the defendant, and others
22 conducted a simultaneous flip on Condo 1103 in Dallas, Texas.

23 January -- June 18, 2007, Robert Brooks signed a
24 HUD-1 settlement statement.

25 July 5th, 2007, Robert Brooks and others conducted a

1 simultaneous flip on Condo 1203 in Dallas, Texas.

2 July 6, 2007, Robert Brooks and others conducted a
3 simultaneous closing flip in connection with Condo 5206.

4 July 9, 2007, Defendant Stacey Owens sent documents
5 via UPS to a mortgage lender in Austin, Texas.

6 July 9, 2007, Robert Brooks, the defendant, and
7 others conducted a simultaneous flip on Condo 3105.

8 July 18, 2007, Defendant Robert Brooks and others
9 conducted a simultaneous flip on Condo 3206.

10 July 18, 2007, Stacey Owens sent documents -- you
11 know, Mr. Miller, you read and I'll pour. Y'all just think
12 this is water.

13 All right. Where was I? July 18, 2007, Robert
14 Brooks, et al, the defendants, conducted a simultaneous --

15 MR. HARRIS: Excuse me, Your Honor.

16 THE COURT: -- closing flip on Condo 3206.

17 MR. HARRIS: Your Honor, I believe that you skipped
18 over 44. You stopped for water as you were about to begin
19 paragraph 44.

20 THE COURT: Yes. Right. Okay. July 18, Stacey
21 Owens sends documents via UPS to AFM in Austin, Texas.

22 July 26, 2007, Defendant Brooks, et al, conducted a
23 simultaneous flip on Condo 5208 in Dallas, Texas.

24 July 31, 2007, Defendant Robert Brooks and others
25 conducted a simultaneous closing or flip in Condo 6206 in

1 Dallas, Texas.

2 July 10, 2007, Defendant Deborah Allen faxed
3 photocopies of her driver's license and Social Security card to
4 Defendant Yvonne Salazar Quintanilla.

5 August 17, 2007, Deborah Allen signed a Uniform
6 Residential Loan Application on Condo 1104. Deborah Allen, on
7 that same date, signed a Uniform Residential Loan Application.

8 August 20th, Deborah Allen sent documents by Lone
9 Star Overnight from Bulverde to Defendant Cesar Gonzales.

10 August 21, 2007, Robert Brooks, the defendant, and
11 others conducted a simultaneous flip on Condo 1104 in Dallas,
12 Texas.

13 August 22nd, 2007, Defendant Robert Brooks and others
14 conducted a simultaneous flip on Condo 1101.

15 On or about August 21, 2007, Defendant Robert Brooks
16 and others conducted a simultaneous flip on Condo 5204 in
17 Dallas.

18 August 30th, 2007, Robert Brooks and others conducted
19 a simultaneous flip on Condo 1105 in Dallas.

20 September 4, 2007, Defendant Robert Brooks and others
21 conducted a simultaneous flip on Condo 2103 in Dallas.

22 September 5, 2007, Defendant Robert Brooks and others
23 conducted a simultaneous closing or flip on Condo 3106 in
24 Dallas.

25 September 7, 2007, Defendant Robert Brooks and others

1 conducted a simultaneous flip on Condo 7204.

2 October 30th, 2007, Defendant Robert Brooks and
3 others conducted a simultaneous flip on Condo 1201.

4 November 2nd, 2007, Defendant Robert Brooks and
5 others conducted a simultaneous flip on Condo 7110.

6 On November 6, 2007, closing documents for 7110 were
7 sent via DHL Express to Wells Fargo Home Mortgage.

8 On September -- excuse me -- November 7, 2007, Robert
9 Brooks and others conducted a simultaneous flip on 4101, condo
10 in Dallas, Texas.

11 November 7, 2007, Robert Brooks and others conducted
12 a simultaneous flip on Condo 6208 in Dallas, Texas.

13 December 20, 2007, Defendant Robert Brooks and others
14 conducted a simultaneous flip on Condo 7101 in Dallas, Texas.

15 December 20, 2007, Defendant Robert Brooks and others
16 conducted a simultaneous flip on Condo 5108 in Dallas, Texas.

17 December 26, 2007, Defendant Robert Brooks and others
18 conducted a simultaneous flip on Condo 5105 in Dallas, Texas.

19 December 26, 2007, Geraldine Williams sent the
20 closing documents for Condo 5105 via Fed-Ex to Countrywide Bank
21 in Austin, Texas.

22 On or about December 26, 2007, Robert Brooks, the
23 defendant, and others conducted a simultaneous flip in
24 connection with Condo 5104 in Dallas, Texas.

25 On or about December 31, 2007, Defendant Deborah

1 Allen sent closing for Condo 4205 from Bulverde, Texas via
2 American Airlines Priority Parcel Service to Robert Brooks, the
3 defendant, in Dallas, Texas.

4 January 2nd, 2008, Robert Brooks and others, the
5 defendants, conducted a simultaneous flip on Condo 4205 in
6 Dallas.

7 January 16, 2008, Defendant Robert Brooks and others
8 did a simultaneous flip on Condo 6201 in Dallas, Texas.

9 February 5th, 2007, Defendant Robert Brooks conducted
10 a simultaneous flip on Condo 4106 in Dallas, Texas.

11 February 21, 2008, Defendant Robert Brooks and others
12 did a simultaneous flip on Condo 7205 in Dallas, Texas.

13 All of that, the government alleges by indictment
14 from the grand jury, is in violation of Title 18, United States
15 Code, Section 1349.

16 Count 2 of the indictment incorporates all of that
17 previously read material and alleges that on or about October
18 4, 2006, Defendant Robert Brooks, Cheryl Brooks, Stacey Owens
19 and Cedric Lester, aided and abetted by each other and others
20 known to the grand jury, for purpose of executing the above
21 described scheme to defraud and obtained money and property by
22 means of false and fraudulent pretenses, representations and
23 promises, did knowingly cause to be delivered by a private
24 commercial carrier, to wit: UPS, according to the directions
25 thereon, from Flower Mound, Texas, in the Northern District of

Chris Poage, RMR, CRR
United States Court Reporter

1 Texas, to Supreme Mortgage Group in San Antonio, Texas, in the
2 Western District of Texas, items relating to the closing for
3 number XXXX XXXXX XXXX XXXX in Dallas, Texas, in violation of
4 Title 18, United States Code, Section 1341 and 2.

5 Now, Count 3, 4, 5, 7, 8 and 9 allege those same
6 kinds of use of interstate carriers to transport these papers
7 that you've seen the exhibits of. I'll go back to Count -- and
8 it has different people involved in each count, but Robert
9 Brooks is alleged to be involved in each of those counts.

10 Count 6, the government has agreed, and the Court has
11 granted the defense motion to dismiss Count 6 for various
12 technical legal reasons. So you don't have to be bothered with
13 Count 6.

14 And all of those counts involving use of interstate
15 commerce and interstate entities all are alleged by the grand
16 jury to be a violation of Title 18, United States Code, Section
17 1341 and 2. All right. That was -- yes. All right. That
18 concludes the reading of the indictment. Now -- for that
19 conspiracy and the real estate mortgage case.

20 Next, you'll find the indictment for the income tax
21 matters which alleges in Count 1 that on or about October 21st,
22 2008, in the Western District of Texas, Robert Brooks did
23 willfully aid and assist in, and procure, counsel and advise
24 the preparation and presentation to the Internal Revenue
25 Service of a joint United States Individual Income Tax Return

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1 Form 1040, of himself and his wife, for the calendar year 2007.
2 The return was false and fraudulent as to a material matter in
3 that it reported on Line 17, Schedule E income in the amount of
4 \$200,991, whereas, as the Defendant then and there well knew,
5 he and his wife had Schedule E income well in excess of that
6 amount. And that, the grand jury alleges, is a violation of
7 the Title 26, United States Code, Section 7206(2).

8 Count 2, on or about October 21, 2008, in the Western
9 District of Texas, Cheryl Brooks -- actually that -- we don't
10 need to read that because she's already pled guilty, and she's
11 not on trial.

12 Count 3, on or about October 27, 2008, in the
13 District of Utah, the defendants did willfully aid and assist
14 in, and procure, counsel and advise the preparation and
15 presentation to the Internal Revenue Service of a U.S. return
16 of partnership income Form 1065 of Upscale Realty, LLC, for the
17 tax year April 10, 2007, to December 31, 2007. The return was
18 false and fraudulent as to a material matter in that it
19 reported on Line 20 Other Deductions in the amount of \$798,855,
20 whereas, the Defendants well knew, included in that amount was
21 a \$475,000 "management fee" to a corporation partly owned by
22 Robert Brooks which had not in fact been paid. And that's
23 alleged to be a violation of Title 26, United States Code,
24 Section 7206(1).

25 Count 1 -- and we're going back now to the elements

1 that you have to focus on on the conspiracy case. Title 18,
2 United States Code, Section 1349, makes it a crime for anyone
3 to conspire to use the mails in carrying out a scheme to
4 defraud.

5 The Defendant is charged with conspiring to use the
6 mails and interstate wire transfers for the purpose of
7 executing and attempting to execute a fraudulent scheme,
8 obtaining money from mortgage proceeds through the use of
9 simultaneous purchase at or about fair market value and sale at
10 an artificially inflated price, known as a land flip or
11 property flip.

12 A conspiracy is an agreement between two or more
13 persons to join together to accomplish some unlawful purpose.
14 It is a kind of partnership in crime in which each member
15 becomes the agent of every other member.

16 For you to find the defendant guilty of this crime,
17 you must be convinced that the government has proved each of
18 the following beyond a reasonable doubt:

19 First: That the defendant and at least one other
20 person made an agreement to commit the crime of mail fraud as
21 charged in the indictment.

22 Second: The defendant knew the unlawful purpose of
23 the agreement and joined in it willfully, that is, with the
24 intent to further the unlawful purpose; and

25 Third: That one of the conspirators during the

1 existence of the conspiracy knowingly committed at least one of
2 the overt acts described in the indictment, in order to
3 accomplish some object or purpose of the conspiracy.

4 One may become a member of a conspiracy without
5 knowing all of the details of the unlawful scheme or the
6 identities of all the other alleged conspirators. If a
7 defendant understands the unlawful nature of a plan or scheme
8 and knowingly or intentionally joins in that plan or scheme on
9 one occasion, that is sufficient to convict him for conspiracy
10 even though the defendant had not participated before and even
11 though the defendant played only a minor part.

12 The government need not prove that the alleged
13 conspirators entered into any formal agreement, nor that they
14 directly stated between themselves all of the details of the
15 scheme. Similarly, the government need not prove that all of
16 the details of the scheme alleged in the indictment were
17 actually agreed upon or carried out. Nor must it prove that
18 all of the persons alleged to have been members of the
19 conspiracy were such or that the alleged conspirators actually
20 succeeded in accomplishing their purpose -- their unlawful
21 objectives. Excuse me.

22 Mere presence at the scene of an event, even with
23 knowledge that a crime is being committed, or the mere fact
24 that certain persons may have associated with each other and
25 may have assembled together and discussed common aims and

1 interests, does not necessarily establish proof of the
2 existence of a conspiracy. Also, a person who has no knowledge
3 of a conspiracy but who happens to act in a way which advances
4 some purpose of a conspiracy, does not thereby become a
5 conspirator.

6 Counts 2 through 5 and 7 through 9, mail fraud.
7 Title 18, United States Code, Section 1341, makes it a crime
8 for anyone to use the mails in carrying out a scheme to
9 defraud. Each separate use of the mails in furtherance of a
10 scheme to defraud constitutes a separate offense.

11 For you to find the defendant guilty of Counts 2
12 through 9, excluding Count 6, of course, you must be convinced
13 that the government has proved each of the following beyond a
14 reasonable doubt:

15 First: That the defendant knowingly created a scheme
16 to defraud, that is to obtain money from mortgage proceeds
17 through the use of a simultaneous purchase at or about fair
18 market value and sale at an artificially inflated price, known
19 as a land flip or property flip;

20 Second: That the defendant acted with specific
21 intent to defraud;

22 Third: That the defendant mailed something or caused
23 another person to mail something through the United States
24 Postal Service or a private or commercial interstate carrier
25 for the purpose of carrying out the scheme, to wit -- and then

1 it lists the various counts involving mail fraud.

2 Count 2 involving UPS. Count 3 involving Lone Star
3 Overnight. Count 4 involving DHL Express. Count 5 involving
4 UPS. Count 7, Lone Star Overnight. Count 8, Federal Express.
5 And Count 9, American Airlines Priority Parcel Service.

6 Fourth: The government must prove to you that the
7 scheme to defraud employed false, material representations;
8 And

9 Fifth: That the scheme affected a financial
10 institution in Count 2 and Count 8. The parties have
11 stipulated for purposes of Count 2 that Supreme Mortgage Group
12 in San Antonio, Texas is a financial institution. The parties
13 have also stipulated for purposes of Count 8 that Countrywide
14 Bank is a financial institution.

15 A scheme to defraud includes any scheme to deprive
16 another of money, property or the intangible right to honest
17 services by means of false or fraudulent pretenses,
18 representations or promises.

19 An intent to defraud means an intent to deceive or to
20 cheat someone.

21 A representation is false if it is known to be untrue
22 or is made with reckless indifference as to its truth or
23 falsity. A representation would also be false when it
24 constitutes a half-truth or effectively omits or conceals a
25 material fact, provided it is made with intent to defraud.

1 A false statement is material if it has a natural
2 tendency to influence or is capable of influencing the decision
3 of the person or entity to which it is addressed. It is not
4 necessary that the government prove all of the details alleged
5 in the indictment concerning the precise nature and purpose of
6 the scheme, or that the mailed material was itself false or
7 fraudulent, or that the alleged scheme actually succeeded in
8 defrauding anyone, or that the use of the mail was intended as
9 the specific or exclusive means of accomplishing the alleged
10 fraud.

11 What must be proved beyond a reasonable doubt is that
12 the defendant knowingly devised or intended to devise a scheme
13 to defraud that was substantially the same as the one alleged
14 in the indictment and that the use of the mails was closely
15 related to that scheme in that the defendant either mailed
16 something or caused it to be mailed in an attempt to execute or
17 carry out the scheme. To cause the mails to be used is to do
18 an act with knowledge that the use of the mails will follow in
19 the ordinary course of business or where such use can
20 reasonably be foreseen even though the defendant did not intend
21 or request the mails to be used.

22 The guilt of a defendant in a criminal case may be
23 established without proof that the defendant personally did
24 every act constituting the offense alleged. The law recognizes
25 that ordinarily anything a person can do for himself may also

1 be accomplished by him through the direction of another person
2 as his or her agent or by acting in concert with or under the
3 direction of another person or persons in a joint effort or
4 enterprise.

5 If another person is acting under the direction of
6 the defendant or if the defendant joins another person and
7 performs acts with the intent to commit a crime, then the law
8 holds the defendant responsible for the acts and conduct of
9 such other persons just as though the defendant had committed
10 the acts or engaged in the conduct.

11 Before any defendant may be held criminally
12 responsible for the acts of others, it is necessary that the
13 accused deliberately associate himself in some way with the
14 crime and participate in it with the intent to bring about the
15 crime.

16 Of course, mere presence at the scene of a crime,
17 knowledge that a crime is being committed, are not sufficient
18 to establish that the defendant either directed or aided and
19 abetted the crime unless you find beyond a reasonable doubt
20 that the defendant was a participant and not merely a knowing
21 spectator. In other words, you may not find the defendant
22 guilty unless you find beyond a reasonable doubt that every
23 element of the offense as defined in these instructions was
24 committed by some person or persons and that the defendant
25 voluntarily participated in its commission with the intent to

1 violate the law.

2 The good faith of a defendant is a complete defense
3 to the charge of mail fraud in the indictment because good
4 faith on the part of the defendant is inconsistent with the
5 intent to defraud.

6 A person who acts or causes another person to act on
7 a belief of an opinion -- or an opinion honestly held is not
8 punishable under the statute merely because the belief or
9 opinion turns out to be inaccurate, incorrect or wrong. An
10 honest mistake in judgment or an honest error in management
11 does not rise to the level of criminal conduct.

12 A defendant does not act in good faith if, even
13 though he honestly holds a certain opinion or belief, that
14 defendant also knowingly makes false or fraudulent pretenses,
15 representations or promises to others.

16 While the term good faith has no precise definition,
17 it encompasses, among other things, a belief or opinion
18 honestly held, an absence of malice or ill will, and an
19 intention to avoid taking unfair advantage of another.

20 The burden of proving good faith does not rest with
21 the defendant because the defendant does not have any
22 obligation to prove anything in this case. It is the
23 government's burden to prove to you beyond a reasonable doubt
24 that the defendant acted with the intent to defraud.

25 If the evidence in the case leaves you with a

1 reasonable doubt as to whether the defendant acted with intent
2 to defraud or in good faith, you must acquit the defendant.

3 Now it is the income tax case. Title 26, United
4 States Code, Section 7206, makes it a crime for anyone
5 willfully to aid or assist in the preparation under the
6 Internal Revenue laws of a document which is false or
7 fraudulent as to any material matter. Each separate act
8 constitutes a separate offense.

9 For you to find the defendant guilty of this crime,
10 as alleged in Count 1 and Count 3, you must be convinced that
11 the government has proved each of the following beyond a
12 reasonable doubt:

13 First: That the defendant aided in, assisted in,
14 procured, counseled and advised the preparation and
15 presentation of a return arising under the Internal Revenue
16 laws;

17 Second: That in this return the defendant falsely
18 stated that, in Count 1, the gross income was \$200,991 in 2007,
19 and in Count 3, that Upscale Realty had other deductions in the
20 amount of \$798,855;

21 Third: That the defendant knew that the statement in
22 the return was false; and

23 Fourth: That the false statement was material; and

24 Fifth: That the defendant aided in, assisted in,
25 procured, counseled and advised the preparation and

1 presentation of this false statement willfully, that is, with
2 the intent to violate a known legal duty.

3 It is not necessary that the government prove that
4 the falsity or fraud was with the knowledge or consent of the
5 person authorized or required to present such return.

6 A statement is material if it has natural tendency to
7 influence or is capable of influencing the Internal Revenue
8 Service in investigating or auditing a tax return or in
9 verifying or monitoring the reporting of income by a taxpayer.

10 The word knowingly, as that term has been used from
11 time to time in these instructions, means that the act was done
12 voluntarily and intentionally, not because of accident or
13 mistake.

14 Evidence that the defendant in good faith followed
15 the advice of counsel would be inconsistent with an unlawful
16 intent to violate a known legal duty as charged in both
17 indictments. Unlawful intent has not been proved if the
18 defendant, before acting, made a full and complete good faith
19 report of all material facts to an attorney he or she
20 considered competent;

21 Second: Received that attorney's advice as to the
22 specific course of conduct that was followed; and

23 Third: Reasonably relied upon that advice in good
24 faith.

25 To reach a verdict, whether it is guilty or not

1 guilty, all of you must agree. Your verdict must be unanimous
2 on each count of the indictment. Your deliberations will be
3 secret. You will never have to explain your verdict to anyone.

4 It is your duty to consult with one another and to
5 deliberate in an effort to reach agreement if you can do so.
6 Each of you must decide the case for yourself but only after an
7 impartial consideration of the evidence with your fellow
8 jurors. During your deliberations do not hesitate to reexamine
9 your own opinions and change your mind if you are convinced
10 that you are wrong. But do not give up your own honest belief
11 as to the weight or effect of the evidence solely because of
12 the opinion of your fellow jurors or for the mere purpose of
13 returning a verdict.

14 Remember at all times, you are the judges, judges of
15 the facts. Your duty is to decide whether the government has
16 proved the defendant guilty beyond a reasonable doubt.

17 When you go to the jury room, the first thing you
18 should do is select one of your number as your presiding juror
19 who will help to guide your deliberations and speak for you
20 here in the courtroom.

21 A form of verdict has been prepared for your
22 convenience.

23 The presiding juror will write the unanimous answer
24 of the jury in the space provided for each count of the
25 indictments, either guilty or not guilty. At the conclusion of

1 your deliberations, the presiding juror should date and sign
2 the verdict.

3 If you need to communicate with me during your
4 deliberations, the presiding juror should write the message and
5 give it to the Court Security Officer. I will either reply to
6 you in writing or bring you back into the courtroom to answer
7 your message.

8 Bear in mind that you are never to reveal to any
9 person, not even to the Court, how the jury stands, numerically
10 or otherwise, on any count of the indictments until after you
11 have reached a unanimous verdict.

12 There follows then the verdict forms, first for the
13 Cause No. 10-CR-536. And that has eight different places for
14 you to answer.

15 Here, after a brief stretch recess, Mr. Harris is
16 going to close his summation for you, and he will tell you why
17 he thinks you ought to write in the word "guilty" on each
18 blank. After that, Mr. Gordon will give his closing summation.
19 He will advocate on behalf of Mr. Brooks why he believes you
20 should write the word "not guilty" on each blank.

21 Now, each lawyer has an equal amount of time. They
22 may or may not use all of the time that they are allotted. But
23 because the government has the burden of proof, Mr. Harris has
24 the option and opportunity to give some statements and
25 summation at the beginning, when we come back here in a moment,

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1 then Mr. Gordon will give his advocacy for Mr. Brooks, and then
2 Mr. Harris, because the government has the burden of proof,
3 will get to give the final closing argument.

4 So with that, we will be in recess for ten minutes,
5 and you-all get ready.

6 (Recess at 11:01 a.m. until 11:12 a.m., jury in, defendant
7 present, open court)

8 THE COURT: You may be seated. Thank you.

9 Mr. Harris, you may proceed to make your presentation
10 to the jury.

11 **CLOSING STATEMENT**

12 MR. HARRIS: Thank you very much, Your Honor. May it
13 please the Court, students, ma'am, ladies and gentlemen of the
14 jury. Good morning.

15 I submit to you that over the course of this trial we
16 have produced evidence that proves each and every one of the
17 elements of the offenses submitted to you beyond a reasonable
18 doubt.

19 You may recall that when I stood before you in
20 opening statement and gave you an overview, I even told you
21 that there was one count for which we may not have the proof of
22 the interstate shipment and that that count would not be
23 submitted to you. And, indeed, that has come to pass.
24 However -- and I'll get into more detail on it later -- I do
25 submit that it is still relevant to the overall conspiracy and

1 the overall scheme.

2 But, first, we're going to talk tax. We're going to
3 talk about the tax counts. And while I submit to you that
4 there's evidence for each and every element beyond a reasonable
5 doubt, I'm also going to submit to you that there are certain
6 elements that I believe are not much in dispute and, therefore,
7 I won't spend that much time on them.

8 For instance, the element that both the Upscale
9 Realty return and the Brooks' personal 1040s were false as to
10 a material matter, I don't think that's in dispute. I think
11 even their own expert testified that the \$475,000 Amadeus
12 management fee should never have been in there.

13 So the return is wrong. It's false as a material
14 matter. It falsely increased the other deductions of Amadeus
15 to 798,000 -- I'm sorry -- the other deductions of Upscale to
16 \$798,855; that that reduced Upscale's gross profit by \$475,000;
17 that that flowed over to the defendants' 1040, their personal
18 return -- the Defendant Robert Brooks' personal return, jointly
19 with his wife Cheryl -- I still use the term plural,
20 defendants -- that it thereby reduced their gross income by
21 \$475,000 to the amount of 290,000 -- \$200,991 that appears in
22 the indictment. So the return's clearly false.

23 Is that the sort of information that is material, as
24 His Honor described? Would that affect the operations of the
25 Internal Revenue Service? Well, of course, it would. It

1 reduced how much the tax was going to be owed. It reduced, you
2 know, what amount they were expecting by a check to come in.
3 So, clearly, materially -- clearly material, clearly false.
4 Those elements I think are not in dispute.

5 The big question, of course, becomes, to borrow from
6 the old Watergate line, what did he know and when did he know
7 it? Did he know that it was false? Did he file it willfully,
8 that is with the intent to violate the known legal duty to file
9 a truthful income tax return? And I submit to you that the
10 evidence indicates yes. Cheryl Brooks testified that they
11 first looked at a draft of the return, prior to the creation,
12 out of thin air, of this management fee of \$475,000. And the
13 reaction in so many words was: Holy cats, we can't pay that.

14 So they go to their CPA, Stephen Scheller, who had
15 the work papers of Carol Harlem, that showed what the real
16 income was. That's what made it into the original 1040 he
17 prepared. To prepare a 1040, he had to have prepared an
18 Upscale return first so that he would know what would flow
19 over.

20 And the defendant, I think, is going to indicate that
21 he had a reliance on Mr. Scheller, the professional CPA, to
22 give advice. Now, other people tell lawyer jokes. I tell
23 accountant jokes, which may not be pretty smart considering
24 some of the company I keep. But here we go.

25 What's the difference between a mathematician, a

1 statistician and an accountant? You ask a mathematician, how
2 much is two plus two, a mathematician is going to look at you
3 and go, two plus two is four.

4 You ask a statistician: How much is two plus two,
5 and a statistician is going to say that with a degree of
6 certainty of 100 percent and a variance of zero, two plus two
7 will be four.

8 You ask a certain CPA, how much is two plus two, and
9 he's going to ask, what do you want it to be? And that, I
10 submit to you, is what happened here. The Defendant Robert
11 Brooks knew they were falsifying Upscale's return so that they
12 could falsify their personal return, so the tax bite would be
13 reduced from -- and I forget the figures. You saw it. It was
14 something like from 292,000 to something like 68,000, which
15 reduced the check they were going to have to write from 145,000
16 to something like 45,000, infinitely more manageable.

17 And as Cheryl Brooks told you, she didn't undertake
18 any action without consulting Robert, without consulting the
19 defendant. So I submit to you that he knew, clearly knew that
20 they were filing false tax returns. He caused Cheryl to file
21 them. These are not charging him with filing the returns.
22 They're charging him with causing the filing of the false tax
23 returns, causing the preparation of the false tax returns. And
24 he did it through Scheller, and he did it through Cheryl. So I
25 submit to you we've established that.

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1 The next thing that I think is not going to be in
2 serious dispute is the mailings. But I'm going to go over them
3 again very briefly, relatively speaking he says, to cover
4 those, nonetheless.

5 Count 2, which you will see -- recall, is the XXXX
6 XXXXXXXX property, Helen Bruns. AmericaHomeKey was on the
7 HUD-1. Government's Exhibit 18-01 we showed you was a UPS
8 shipment, interstate carrier, from Stacey Owens in Flower
9 Mound, Texas at Equity Title to LeDale Coles, Supreme Mortgage
10 in San Antonio, Texas. I don't think the interstate -- I don't
11 think the shipment through a commercial and interstate carrier
12 is going to be disputed. Even though it was intrastate, it's
13 an interstate carrier. His Honor has given you the instruction
14 on that.

15 Count 3 pertains to Condo 7103. That was one of
16 George Autobee's. Government's Exhibit 30-01 is the Lone Star
17 Overnight shipping bill. The lender on this one was Taylor,
18 Bean & Whitaker Mortgage Group, which you saw on the HUD-1.
19 And that was yet another shipment from Stacey Owens, Equity
20 Title, Flower Mound, Texas to LeDale Coles, Supreme Mortgage
21 Group, San Antonio, Texas.

22 Count 4 pertains to Condo 1103, Richard Schroeder.
23 That one was financed by Triam Mortgage, the lady who testified
24 that she and her husband had the business, dba AFM, out of
25 Austin. And there, we have a shipment. Government's Exhibit

1 36-01 is the shipping bill from Pro Processing in Dallas to
2 Richard Schroeder's home in Bulverde, Texas.

3 Count 5 pertained to Condo 5206. That's Jon Jezek,
4 the fellow who worked as the abstractor at Progressive Title,
5 also got his mortgage through Trian doing business as AFM. And
6 Government's Exhibit 41-01 clearly shows that UPS carried
7 critical documents from Stacey Owens at Equity Title in Flower
8 Mound, Texas to Trian's closing department in Austin, Texas.

9 Count 7 -- Count 6 is out. We failed to show
10 shipping.

11 Count 7 is Condo 1104. That's Deborah Allen's -- one
12 of her two. But 1104 is one of them. That was financed
13 through Bronco Mortgage. And Exhibit 50-01 she testified is
14 her own handwriting. No, I'm sorry. I misspeak. That's to
15 Count 9. Count 7, the evidence showed, and I believe she
16 testified, that that one is a shipment from Cesar Gonzales in
17 Dallas, Texas to Debbie Allen's home in Bulverde.

18 Count 8 is Condo 5105. That's Rick Russell. That
19 was financed by Countrywide Federal Savings Bank. And
20 Government's Exhibit 66-01 shows that Geraldine Williams, at
21 Progressive Title in Dallas, Texas, sent the final closing
22 documents to Countrywide FSB in Austin Texas.

23 Finally, Count 9 is Condo 4205. That's Dr. Stephen
24 Snider, the podiatrist. His was financed through Freedom
25 Mortgage. And you may recall that he testified he went to some

1 lady's house in Bulverde. He described her as blond. You saw
2 Deborah Allen. She testified that some dude she'd never seen
3 before or since came to her house for closing. Clearly, it was
4 Dr. Snider. She testified that she was asked to take the
5 closing documents after he signed them to the airport, put them
6 on a plane up to Dallas. And, indeed, Government's Exhibit --
7 we forgot to write it down, but we put it up on the screen for
8 you, "he" being me. American Airlines, from Deborah Allen,
9 to -- and she listed a series of names, specifically Yvonne, it
10 looked like maybe, or Juan Salazar -- no, Quintanilla. That
11 one was Quintanilla, or Geraldine Williams or Robert Brooks at
12 Pro Processing. So we have clearly established the mailing
13 element, I believe.

14 So, again, we come down to the scheme. Was there
15 a conspiracy to carry out the scheme? They overlap. A meeting
16 of the minds. Because, really, most of the other elements I
17 think are also not in dispute. Most of the things that we have
18 alleged are not going to be in serious dispute. We have shown
19 you time and time and time again. We've put up samples of the
20 40 some properties that are in the indictment. We focused
21 primarily on the transactions relating either to the specific
22 eight counts I just talked about or San Antonio people that
23 overlap with those. But all 40 HUDs are in evidence before
24 you.

25 Now, I've never seen the movie *Groundhog Day*, but

1 my understanding of the storyline is that basically this guy
2 wakes up to relive the same day over and over and over again.
3 And that's essentially what I submit to you is the HUD-1s.
4 They are all basically alike because the deal was alike. The
5 main variance that you have seen is at some point we go from a
6 sales price of \$445,000 to a sale price of \$460,000.

7 You will notice that up until about August of '07
8 the HUD-1s all show that the flipper, if you will, is Texas
9 Residential Properties and the signature is that -- states R.
10 Brooks, either signed by Robert Brooks personally, and you have
11 samples of his handwriting on the checks that we've put into
12 evidence, when Cheryl Brooks told you that she recognized his
13 signature, those were all his. You will note that on some of
14 the HUD-1s it is a different signature, but I submit to you it
15 was all authorized by the defendant.

16 Come early August of '07 there is a change. And
17 that's when you will see that the flipper becomes Upscale
18 Realty, and the signature -- the signatory is that C. scrawl
19 that we have seen so much of Cheryl Brooks. Those are the
20 same -- are the main differences that those are all in. So I
21 don't think there's going to be a whole lot of dispute that
22 they were bought and sold at about the same day. That's on
23 HUD-1 after HUD-1 after HUD-1.

24 Again, it's going to be whether this defendant
25 devised a scheme, conspired with others or whether he had a

1 good faith reliance on others. And I submit to you that when
2 you look at the totality of evidence, some of which I'll touch
3 on shortly, there is no good faith.

4 I'm reminded of a movie that I did watch called
5 *Casa Blanca*. And in that movie, you know, an early 1940s
6 classic, there is a scene in which the chief of police
7 professes that he is shocked, shocked to find out that there's
8 gambling in this establishment, as a waiter walks up to him and
9 says, "Your winnings, sir."

10 So the notion that Robert Brooks was shocked,
11 shocked to find out that there were falsities being made to
12 various lenders, I submit just does not hold true.

13 The evidence clearly showed that he devised this
14 scheme to defraud the lenders through the misrepresentations
15 and conspired with many others, several who have pleaded guilty
16 to conspiring with him. Yvonne Salazar Quintanilla said she
17 conspired with Robert Brooks. Cheryl Brooks testified that she
18 conspired with her own husband. Painful, painful to put her
19 through that, but there you have it.

20 Cedric Lester testified that he conspired with
21 Robert Brooks. Richard Howard, our first witness, how can I
22 forget Richard Howard, testified that he conspired with Robert
23 Brooks.

24 Now, I anticipate that we will hear a lot about
25 the fact that Richard Howard was a lawyer; that Richard Howard

1 was a licensed professional, as were several of the names I
2 just mentioned. I submit to you that that is not -- is not
3 enough to establish the reliance; that Robert Brooks had enough
4 experience in real estate, as Richard Howard told you, far more
5 so than he himself had, and that Robert Brooks was, indeed, the
6 driving force behind this conspiracy.

7 His Honor gave you instruction that to rely upon
8 the advice of counsel, you have to have made a full and
9 complete good faith report of all material facts to an
10 attorney.

11 And remember, I asked Mr. Howard, well, did he
12 mention this part of the transaction? No. Did he mention they
13 were going to do this part? No. Okay. Well, what were you
14 told? Well, we were told that the property had to be reported
15 before you could turn around and sell it? And did he follow
16 that advice? No. So we don't have the good faith reliance
17 upon counsel, not Richard Howard and not the other unnamed
18 attorney that Mr. Howard testified that he and Mr. Brooks went
19 to see.

20 Now, you've also heard that the conspiracy can
21 reach out to others even though you may not have had direct
22 contact with Robert Brooks. So the fact Deborah Allen pleaded
23 guilty to conspiracy and testified that her contacts with
24 Robert Brooks was minimal, does not save Robert Brooks from
25 being guilty of conspiracy. She testified that her principal

1 contact was always Yvonne, Yvonne Salazar, but she also told
2 you that as Cheryl Brooks' assistant, she personally saw Robert
3 Brooks direct her and others.

4 His Honor also gave you instructions about the
5 notion of false, false and fraudulent, that an intent to
6 deceive, to defraud somebody includes making false and
7 fraudulent pretenses, representations and promises; that the
8 making of that includes not just the overt lies but also what
9 you leave out.

10 And we submit that that is very critical in what
11 happened here, because, as we've heard over and over, the
12 disclosure to the lender of the substance of the transaction,
13 the true nature of the transaction, is critical. And in that
14 sense every single one of these second side HUD-1s are false,
15 every single one. And the defendant knew it.

16 There are lots of blank lines, I pointed out, on
17 both seller side and buyer's side of a HUD-1 to disclose any
18 aspect of the transaction to the lender. They did not do it.
19 Now, the defendant, I anticipate, is going to testify, "But,
20 hey, I wasn't the escrow officer. I relied on Geraldine. I
21 relied on Stacey Owens. I relied on Cesar Gonzales. I submit
22 again that is a false reliance. He corrupted these people.
23 Stacey Owens, he came up with tens of thousands of dollars when
24 she needed a loan that she never paid back.

25 As far as the others, Geraldine Williams, Cesar

1 Gonzales, those were his employees. He set up Progressive
2 Title, and he directed everyone in that office.

3 People went through other people, you heard. On
4 the Pro Processing side Tamatha Buckholt and Niesha Manuel went
5 through Yvonne Salazar. Cesar Gonzales went through Geraldine
6 Williams. But they all reported -- and you heard the testimony
7 that both Geraldine and Yvonne reported to the defendant,
8 Robert Brooks. So he is -- he is clearly in control of what is
9 going on.

10 And the false representations, I'm just going to
11 go over the biggest ones. The biggest ones are starting -- I
12 almost feel like Letterman's Top 10, although I don't have ten.
13 Number one, that this is a typical arm's length, freely
14 negotiated price between unrelated buyer and seller. Clearly
15 false. Mr. Brooks just simply set the price and at either 460
16 or 445. So he clearly knows it is not an arm's length
17 transaction.

18 Two, that the property is at or near fair market
19 value, at 460 or \$445,000. Well, I submit to you, and I'm
20 going to get into a little more detail on the appraisals, but
21 having both bought the property at or about the same time for
22 approximately half those amounts, having corrupted or misled
23 appraisers, he clearly knows that that's not the fair market
24 value for which he is now flipping it to the buyer for whom he
25 has obtained the mortgage loan.

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1 Third, that the buyer is putting the buyer's own
2 money in, something that every single lender required. We
3 heard about a hundred percent financing loans, but we've never
4 seen one in any of these. These all range between 95 to 90
5 percent. And that is that cash at closing, cash due from
6 borrower is critical. Every representation being made to the
7 lender is that buyer has skin in the game, real equity being
8 put in, their own money being put in. The defendant knows it's
9 otherwise because that's how he set this whole thing up, to get
10 money fraudulently.

11 Four, the implication is that when borrower is
12 borrowing, borrower's going to pay back. And yet, we have
13 clearly heard, time and again, even out of his own voice on the
14 Bettie Artis recording, that he's taking care of closing. He's
15 taking care of downpayment, and he's paying the mortgage for
16 the first year. So false representation.

17 Five, the implication that he bought sufficiently
18 before he sold so as to be the titleholder of record. Clearly
19 not true. We heard about title commitments being changed. We
20 heard about the crudity of LeDale Coles and Yvonne Salazar at
21 Supreme Mortgage whitening out. We heard that Robert Brooks was
22 upset about that and that that had something to do with the
23 termination of the relationship with LeDale. But I submit to
24 you that the fact that he turns around and sets up Pro
25 Processing and Progressive Title, which bought the expensive

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1 machinery -- Mr. Howard testified about the money to buy the
2 machinery. Mr. Jezek gave it a name. It was the plant, the
3 ability to do their own abstracts. Geraldine had supervisory
4 access to the plant. Geraldine could change title commitments.

5 I submit to you that he wasn't upset at LeDale
6 Coles for falsifying. He was upset at her for using something
7 as crude as Whiteout, that with the difference of type or maybe
8 going over a line could be detected. That's what I submit to
9 you he was upset about.

10 So, false -- I'm on number five still. False in
11 indicating that he is the record titleholder.

12 Six, paid to play. This is the most material
13 omission perhaps of all. Nowhere, nowhere, nowhere is it being
14 disclosed to the lenders that he is paying these buyers
15 post-closing for having participated. Pay to play. Here's
16 \$20,000. Thank you very much, Ms. Artis, on your first condo.
17 Here's 10 -- \$15,000, thank you very much, on your second
18 condo. Here's \$10,000. Here's 7,500. And she wasn't the only
19 one who testified to the money back post-closing. We heard
20 that from others, and we heard it from both of the Schroeders.
21 We heard it from Joseph Cooper. Clearly, omitting pay to play.

22 Next, seven, the verification of deposit fraud.
23 This, I submit to you, is huge. We have tens of thousands of
24 dollars. I think we saw as much as \$90,000 in the email that
25 Mr. Brooks is being told needs to be placed in what is

1 virtually a total stranger's account until the VOD, the
2 verification of deposit, has been done so that they can give it
3 to the lender.

4 Mr. Brooks clearly knows that is going on because
5 he's authorizing it to Cheryl Brooks. Not just from her
6 testimony, but we have seen emails from RB to CB. Along those
7 lines of the no cash due at closing from the borrower, we have
8 seen many times where he directed her in the emails, where
9 Robert Brooks directed Cheryl Brooks in emails, get separate
10 check; check, don't wire; wire, separate check; as the emails
11 are flowing up as to what we need for first side, second side,
12 moneys being put into people's accounts and artificially beef
13 them up so that they will pass muster.

14 Eight, and I'm going to put with -- eight, as the
15 biggest, I probably could have gone to a top ten, but I wasn't
16 thinking of that last night. Eight is the false employment.
17 And we saw how many people listed as The Studios -- The Studios
18 Online, Studio and Fashion, a variant of one of Mr. and Mrs.
19 Brooks' other companies. And the indication is, didn't work
20 there.

21 We saw an email from Deborah Allen, and she
22 testified that at the time of her two condos, 1104 and 1101,
23 she was losing her job. She was going to have to file for
24 unemployment. And there's emails indicating, don't worry.
25 We'll come up with a job for you. And what was listed on her

1 application, The Studios, three years.

2 Cheryl Bussey, the defendant's own mother-in-law,
3 The Studio, three years. True information? No. False
4 information. As I recall, I think -- let me think. Who else
5 did we see? Brenda Hardaway didn't testify, but you saw the
6 emails where Yvonne is sending up the chain, we need to come up
7 with different employment for Brenda Hardaway, and in so many
8 words said her employment isn't going to cut it. And what do
9 we see on a mortgage app. for her? The Studio, three years.
10 And all of -- at \$12,000 a year. I'm sorry. \$12,000 a month,
11 \$144,000 a year. They had a pattern. The pattern worked. And
12 speaking of worked, we'll come back to the notion of when it
13 worked and when it may not have worked. We'll come back at
14 that.

15 So I submit to you that you have to look at this
16 in its totality to see the defendant's intent was to defraud,
17 was to conspire, that it was not that he was acting in good
18 faith.

19 As I indicated, there was testimony that he had
20 substantial experience in buying and selling real estate. You
21 heard from Richard Howard that the defendant had told him he'd
22 been doing it for about eight years as of -- I think that was
23 2004, the conversation that was being relayed. Even if it was
24 2006, as late as 2006, eight years, that's a substantial
25 amount.

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1 Of course, the defendant knew enough to put money
2 into setting up such companies as Pro Processing, Progressive
3 Title. Well, actually, prior to that, putting the moneys in to
4 set up Supreme Mortgage Group. Then around the time of his
5 falling out with LeDale Coles, he sets up in-house with Pro
6 Processing, sets up Progressive Title.

7 And it's highly significant that the defendant,
8 from the testimony we had, is the only one, the only one who
9 knew all the details of the transaction. Did you notice that?
10 Richard Howard and Cedric Lester testified, well, yeah, we knew
11 that we were inflating values, but we didn't realize they were
12 simultaneous flips. We thought he had actually bought them in
13 advance before selling them.

14 Other people, Deborah Allen -- I'm drawing a
15 blank, but other people testified, well, yeah, I knew that we
16 were falsifying information with false employment, the
17 verification of deposit thing. I'm not putting any money in.
18 But I didn't know the price was inflated. I wouldn't have done
19 it if I knew the price was inflated.

20 The defendant is the only one who knows every
21 single detail of the transaction, not even Cheryl Brooks.
22 Cheryl Brooks told you she never attended one of his
23 presentations. She doesn't even know what he told the
24 prospective investors, the straw buyers. So he is the only one
25 who knew all the details of the transaction.

1 He and his wife are the ones who drew the largest
2 financial benefit from this thing, although, as clearly shown,
3 they certainly paid others a substantial financial benefit in
4 order to bring it about.

5 He was the head of this. He controlled Pro
6 Processing, Progressive Title, Stacey Owens at a different
7 title company, Texas Residential Properties, Upscale Leasing
8 and each of the buyers. And this is very important. Is there
9 anyone who could fire Robert Brooks? No. Is there anyone he
10 couldn't fire? No.

11 Now, the question was asked if there is anybody
12 that he couldn't fire, and you may recall the answer was
13 something along the lines of, well, I suppose he couldn't fire
14 one of his partners. Well, I submit to you that while
15 technically maybe he can't fire one of his partners, what he
16 could simply do is stop using that given company, set up a new
17 one and move on. So maybe he couldn't fire LeDale Coles from
18 Supreme Mortgage Group. But let's face it, he did because he
19 stopped using her. He set up Pro Processing, and he moved on.
20 There is no one he couldn't fire, including his wife. I asked
21 her the question, did he ever fire you? Yes. Repeatedly?
22 Yes. No one he couldn't fire.

23 On the tape with Bettie Artis we hear from the
24 defendant in his own words that very fact and the importance of
25 the very fact. And I quote, "Everybody that I deal with, I own

1 part of their business, or I don't deal with them at all," end
2 quotes. That is critical to making this scheme work out. It's
3 critical to the conspiracy. And it hurt people. It hurt
4 financial institutions, and it hurt people.

5 Putting Bettie Artis on the stand -- well, let me
6 just word it this way. Her testimony was heartbreaking. It
7 was absolutely heartbreaking. While she puts much of the blame
8 from the witness stand on Richard Howard, perhaps more so than
9 Robert Brooks, we also heard Howard testify that behind the
10 scene he was questioning Robert Brooks about Bettie Artis'
11 ability to even be carrying that much debt, to even, you know,
12 apply for and acquire that much debt. And Mr. Brooks' response
13 was to the effect of: Don't worry about it.

14 Also a theme that we heard from Cheryl Brooks,
15 don't worry about it, when she questioned how can we manage
16 this negative cash flow between what we're pulling in rents and
17 what we're paying out on mortgage payments? Don't worry about
18 it, I'll handle it. Don't worry about it, I'll handle it.

19 The defendant also told Richard Howard, when he
20 was questioning about the ability to take on this much debt for
21 Bettie Artis based on her information, her credit score, the
22 defendant made note of the fact that it takes time for these
23 mortgage applications to hit the system. In other words,
24 strike fast, get the money, move on. Use them up, move them
25 on.

1 The scheme needed new money to keep coming in to
2 succeed. That was also critical, because you had this cash
3 flow that Cheryl Brooks talked about. You know, we heard from
4 the defendant's own realtor. The question I asked her on
5 cross-examination was, you know, how much were these rents
6 bearing? Oh, about \$1,800. Also matched what Cheryl Brooks
7 told you.

8 I asked her to do a quick calculation on how much
9 a 36-month -- I used the figure ten percent, I think. I think
10 we'll also see some as low as eight percent, 360-month,
11 30-year, 30-year mortgage, \$400,000 mortgage -- most of these
12 were 414, but I rounded to make it easy. And we heard that the
13 monthly debt expense was going to be \$4,000. So we have about
14 a \$2,300 cash flow shortfall on property after property after
15 property. So you need to have new money coming in for the
16 scheme to continue. And I submit to you that that's why they
17 pushed Bettie Artis to do more properties.

18 I also will ask you to recall the testimony of Jon
19 Jezek. He's the fellow who did -- who worked there, who saw
20 that his colleague Cesar had more scratch than he thought the
21 job would bear, and said: Hey, dude. How do you do that?
22 Cesar goes off to have a discussion, comes back. Next thing
23 Mr. Jezek knows, he's given the opportunity to buy a condo.
24 Well, I knew we were falsifying my income information. I
25 didn't know that it was inflated.

1 Jezek regrets it almost immediately, and that's
2 why he goes to see a lawyer. Oh, my God, what have I done?
3 And at that time he's in the process of agreeing to do a second
4 condo. Remember that testimony? And the lawyer basically
5 tells him: Don't you dare. And when he goes back to tell Mr.
6 Brooks, my lawyer says I can't do this, remember he testified
7 that Brooks, the defendant, was angry at him for not going
8 through with it. Needed the new money to come in to keep the
9 scheme going.

10 Is there any question who's in control? I submit
11 to you no. The emails clearly show that. We had an email from
12 Mr. Brooks to Yvonne, talking about the need to get one of the
13 L.A. deals going. Remember, I established that Marina del Rey
14 is in the Los Angeles area. So we're talking about Anthony
15 Lorek. We're talking about Rick Russell's transactions that we
16 put before you. And he's saying: I need to move -- I can't
17 remember the exact email. I'm hoping y'all will recall it. If
18 not, you can look it up. But it's -- the gist of it is: I
19 need those L.A. deals. I need one of the L.A. deals to move.
20 Take it over from TH, which I submit is Tamatha, or NM, Niesha
21 Manuel, if you have to. I haven't put pressure on for a while,
22 but I'm putting pressure now. That's the boss. That's the
23 boss putting it to the people at Pro Processing, get it done.

24 At the same time -- in the same timeframe he's
25 being told how much money needs to be put in these straw

1 borrowers' -- straw buyers' accounts to get a verification of
2 deposit that's going to pass muster with the lender. We need
3 to show X. He has X minus; therefore, we need Y. I never was
4 good at math. There is no question that he was in control, and
5 he did not take well to being questioned.

6 When I was talking about Mr. Howard and the whole
7 notion of, you know, did he rely on you? Well, I answered what
8 real -- I answered what legal questions he asked me. Well,
9 what was that about? Mostly about corporate formation and
10 stuff. Was it about real estate? No, I'm not a real estate
11 lawyer. When he took you to meetings with prospective
12 investors, did he portray you as our lawyer? Yes. Was that to
13 give the transaction the appearance of legitimacy? And I
14 believe the answer to my question -- however I phrased it, his
15 answer was -- Richard Howard's answer was, the lawyer's answer
16 was, I was a manakin. That speaks volumes. It shows that the
17 defendant is out there to deceive.

18 Now, going back to his quote, everybody that I
19 deal with I own part of their business or I don't deal with
20 them at all -- now, he didn't own the --

21 THE COURT: Mr. Harris, you've used 40 minutes.

22 MR. HARRIS: Thank you, Your Honor.

23 He didn't own the appraisers' business, but he
24 substantially corrupted them, and I submit that that's the same
25 net difference.

1 Mr. Ives, the defendant's own expert, referred to the
2 appraisers as the eyes and ears of the lender. And you heard
3 from lender after lender, especially with these unconventional,
4 reduced proof, stated income, stated asset loans, that they
5 relied heavily on credit score and appraisal. And you saw, you
6 heard from Mr. Lester that he let himself be corrupted by his
7 finder's fee, \$10,000 a pop. I wasn't independent. It was a
8 target-oriented result. He knew what the contract amount was
9 going to be, and he came up with comparables to establish that
10 price, rather than it being the other way -- or established
11 that value rather than it being the other way around.

12 Ms. Kujan, who they put on yesterday, I think speaks
13 for itself. She tells you that she's an independent appraiser,
14 came to her own evaluation. And then I put before you -- what?
15 Some \$70,000 or more in checks, in short order, payable to
16 either her or her husband, mostly the husband. There's no
17 explanation for that. She was corrupted.

18 Ms. Coleman, who testified before you this morning, I
19 submit to you that that's a classic case of picking yourself up
20 by your own boot straps. The defendant feeds her the
21 information. He's already done enough phony flip transactions
22 to beef up comparables in the complex to 460. Those weren't
23 valid appraisals either, and the defendant knew it. Picked him
24 up by his own bootstraps.

25 And every single lender, including Erik Sanchez who

1 they called, testified: Had we known the truth, we would not
2 have done this transaction.

3 I anticipate that you are going to hear a lot of
4 blaming of the victims; that this whole notion of liar loans,
5 stated income loans, stated asset loans, was stupid. Maybe it
6 was. Maybe it was. But it's not a license to lie, and we had
7 that time and again; that they existed to be able to fit a
8 market because not all one size fits all; and that in each
9 instance they were still relying on cash from the borrower at
10 closing; and that you cannot -- the defendant cannot, his
11 buyers cannot unilaterally, behind the scenes change the terms
12 of the deal, come up with side seller agreements and not
13 disclose that to the lender. That just totally shows the
14 defraud.

15 And the defendant's own voice, when we played the
16 tape from Mr. Cooper, and Mr. Cooper doing the best acting he
17 can, is: Holy cow, I've been contacted by the FBI and the IRS.
18 What do I do? What do I do? What do I do?

19 The defendant says: Get on a plane. Get on a plane,
20 come to Dallas, one hour. We'll talk. The defendant knew, and
21 he wanted to get with Cooper in a face-to-face meeting so that
22 he could feed Cooper the line to spin to law enforcement.

23 So the bottom line, none of this was disclosed, that
24 the buyer, loan processor, appraiser, title company, named
25 employer are all acting in collusion, if not conspiracy -- some

1 of these people were duped, but they're all acting in collusion
2 with the defendant. None of that is disclosed to the lenders.
3 The defendant knew you couldn't disclose it to the lenders.
4 For, if it were to be disclosed to the lenders, no loan, no
5 money, you're out.

6 So I submit to you that we have clearly proven each
7 of these allegations -- we have clearly proved each essential
8 element. We've not put before you every allegation. That's
9 why I backed off from that one. But we have put before you
10 numerous transactions. You have more in evidence than we
11 displayed on screen that clearly shows that he committed each
12 charged offense beyond a reasonable doubt. And a week ago this
13 morning you took an oath that a true verdict you would return.
14 I submit to you there is no reasonable doubt. That true
15 verdict will be guilty. Thank you.

16 THE COURT: Mr. Gordon, you may proceed.

17 Mr. Harris, you 15 minutes left.

18 MR. HARRIS: Thank you, Your Honor.

19 **CLOSING STATEMENT**

20 MR. GORDON: Good morning, ladies and gentlemen. I
21 want to start again by thanking you for your service on this
22 jury. I know you've taken a lot of time out of your lives to
23 devote your attention to this case. And I do appreciate you
24 doing that. I'm sure it hasn't been easy, and I know it has
25 been, obviously, a little bit boring in parts.

1 So as I told you when I started the case or I gave
2 you my opening statement, we have a very different view of this
3 case than the government. That still holds true today, ladies
4 and gentlemen. We believe that if you look at all the
5 evidence -- supports a finding that Robert Brooks is not
6 guilty; that he is not guilty of the specific elements that I'm
7 going to get into with you in a minute, the specific elements
8 of mortgage fraud, mail fraud or tax fraud, any of those
9 things.

10 We also believe that the evidence has shown overall
11 that he was not the ringleader of this conspiracy; that there
12 wasn't necessarily even a conspiracy in the first place, ladies
13 and gentlemen; and that Robert Brooks is not this magical
14 puppet master that the prosecutor keeps trying to make him out
15 to be.

16 And I believe that a huge part of their case rests on
17 trying to convince you to assume that Robert Brooks knew
18 everything that was going on, and he knew everything was bad
19 and wrong, but nobody else seemed to know that it was bad, not
20 the lawyers, not the licensed professionals, not the banks.
21 Nobody knew anything was wrong, apparently, except Robert
22 Brooks.

23 But, ladies and gentlemen, then the government
24 actually tries to go the other way and have it both ways.
25 Because, as you know from the testimony of Mr. Howard, he was

1 convicted of being part of a conspiracy, the same conspiracy
2 that Robert Brooks supposedly took place in.

3 So I'm having a hard time understanding how they can
4 say Mr. Howard didn't know any of the details of the
5 transactions. He didn't know enough to advise Mr. Brooks that
6 this stuff was wrong. He was just a manakin, just standing
7 there. And yet, he's charged with the exact same crime and
8 convicted of it? That just doesn't add up, ladies and
9 gentlemen. That's a big flaw in the government's case, when
10 they sit here and argue that he did not know the details.

11 Now, I will submit to you, ladies and gentlemen, that
12 you've heard a lot of evidence in this case, and you've seen
13 Mr. Brooks involved in a lot of transactions. And I'm not here
14 to deny that he was involved in transactions, and I'm not here
15 to deny that he was a businessman. But what our argument is,
16 is that he did not intentionally try to commit fraud in this
17 case.

18 And I submit to you that with all the audiotapes
19 you've heard, with all the transcripts you've seen, with all
20 the emails, all the documents, the government has not put up
21 any documentation or concrete evidence of these people forming
22 a conspiracy in the first place, of these people coming
23 together to form a specific agreement to say: Hey, let's not
24 just make money on real estate. Let's do it illegally. Let's
25 go ahead and defraud the banks. I mean, where is that

1 evidence, ladies and gentlemen? I think it's fair to ask.

2 If this was really going on and all this fraud was
3 existing, I think it's fair to ask why isn't there some
4 specific documentation or something you can hear with your own
5 ears or see with your own eyes, where people say: Yes, here's
6 the deal. I know it's wrong. I know it's a lie. I know it's
7 illegal. Do it anyway. It doesn't exist, ladies and
8 gentlemen.

9 The bulk of the government's case is based on
10 speculation and assumption. And instead of presuming Robert
11 Brooks innocent and giving him the benefit of the doubt, their
12 whole case is premised on you doing the exact opposite,
13 presuming that he's guilty; that he knows every transaction;
14 that he's in charge of everybody; that he can control
15 everybody; that these are all just manakins or robots or
16 zombies. Robert Brooks tells you to move, you're going to do
17 whatever he says.

18 And, ladies and gentlemen, I think when you hear the
19 witnesses, they didn't back that up, ladies and gentlemen.
20 There were multiple witnesses that said that Yvonne Quintanilla
21 ran Pro Processing; that she hired and fired people. Now, what
22 happens to that evidence? How does that tie in to the
23 government's argument that Mr. Brooks controlled everything?
24 It doesn't tie in. It conflicts with their evidence. It
25 conflicts with the arguments that you've just heard here.

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1 And so the government's making an argument. I
2 understand their argument. But I submit to you that the
3 witnesses that testified and the evidence presented didn't
4 really support that, ladies and gentlemen.

5 If you really dig into the details of this case and
6 you really look for the specific allegations, what did Robert
7 specifically tell people that was illegal? The closest that I
8 think you ever heard was Yvonne Quintanilla saying: Well, I do
9 remember a discussion with Cheryl and Robert about doing
10 something with a verification of employment. And she said in
11 so many words that it involved something dishonest. That's
12 about the only specific thing I heard where a witness said that
13 she had a specific discussion with Mr. Brooks that involved
14 specifically doing something dishonest.

15 And you may remember that when I questioned her
16 further and I said, well, is it possible that as far as this
17 issue maybe it was just Cheryl Brooks you spoke to about these
18 VOEs. And her response to me was: Yeah, maybe, maybe so.

19 And you've seen these VOEs. And just in case people
20 forget what that is, verification of employment. You've seen
21 the forms with the false information, and you haven't seen
22 Robert Brooks' name on those forms. You saw Cheryl Brooks'
23 name. Now, again, the government will want you to assume that
24 every time Cheryl Brooks signs her name, that she's done it
25 because Robert's programmed her to sign it. And there's no way

1 that she could have signed anything on her own because she
2 consulted with Robert on every single decision.

3 I don't think that really holds water, ladies and
4 gentlemen. I think that's going a little bit too far, to say
5 that every one of these witnesses was controlled by Mr. Brooks.
6 None of them had any independent ability to stand up and say:
7 Hey, Robert, you know, the training I got said you really
8 shouldn't do it this way. It should be done a different way.
9 According to the government, he corrupted them all. And,
10 apparently, he robbed them of their free will. Nobody could
11 ever stand up to Robert and say: Robert, you know, as a title
12 company officer, it's not supposed to be done this way. You've
13 got to do it differently. According to the government, I guess
14 none of those people could ever stand up and say: Robert, it's
15 wrong.

16 But as I said, the government likes to have it both
17 ways, because many of those same people, as you heard, were
18 indicted for being part of this alleged conspiracy. So on the
19 one hand the government says, they didn't know anything. They
20 didn't know any better. They couldn't stand up to Robert and
21 tell him the truth. But, on the other hand, the government
22 says: Well, they did know about the conspiracy, and we're
23 going to go ahead and indict them. There's just a major
24 conflict in their theory, ladies and gentlemen. It just
25 doesn't hold water. We've seen it time and time again.

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1 So what we have seen in this case, from my
2 perspective, is we have seen some things that are undisputed.
3 Obviously, Mr. Brooks bought and sold real estate, and he
4 bought and sold a lot of it. And we believe that undisputed
5 testimony from our expert and even the government's agents and
6 bank officials -- I'm sorry. Not bank officials. But the
7 undisputed evidence is that it's not illegal to buy and sell
8 property. It's not illegal to buy and sell it and make a huge
9 profit. It's not illegal to buy and sell it on the same day,
10 even, and make a huge profit. Those are undisputed.

11 Now, that might sound kind of weird to some people,
12 and you may say: Well, I don't know. Why would you sell and
13 buy it on the same day? But it's not disputed. It's not
14 illegal.

15 Now, we get into some other areas where I guess it's
16 fair to say there's a dispute about whether some of the other
17 things were legal. One of the main things the government has a
18 problem with is the fact that Mr. Brooks paid the downpayment
19 for these buyers. But I asked witness after witness on the
20 stand: Where is the law or rule that says he can't make the
21 downpayment? And they could never show me where it was, ladies
22 and gentlemen. I said: Is there a document we've seen on the
23 screen so far that says you cannot ever make the downpayment?
24 And they said: No. Well, some of them said: Well, it's in
25 there somewhere. I just -- I can't find it right now. You

1 know, well, I'm sure it's in the papers I reviewed. But they
2 never produced solid, credible documentation to show that he
3 was prohibited from making that downpayment, ladies and
4 gentlemen.

5 The best they could say was, well, it should have
6 been disclosed to the banks. And that's a common theme you've
7 heard from them and from the bank witnesses. They had a right
8 to know about this information.

9 But I pushed them on that, too. I said: Okay.
10 Okay. Maybe you have a right to know in your mind. Well, who
11 is the one who you think has a legal duty to tell you that the
12 downpayment is being made? And all of them, even the bank
13 officials conceded, well, it would be the borrower or it would
14 be one of the loan officers. They all admitted they don't have
15 an official contractual relationship with Mr. Brooks, the
16 seller. And so he has no official legal duty to tell them:
17 Hey, I'm going to pay the downpayment for this person who's
18 getting a loan from you. He just doesn't have a duty to do
19 that.

20 Now, is that a good thing? Is that the way the
21 system should be? I don't know. I mean, it does sound funny
22 to me, but it doesn't sound illegal necessarily. And that's
23 what you're here to make a determination on. You're here to
24 distinguish between things that are funny, weird, unusual,
25 sound strange and things that are flat out illegal. And they

1 don't always go together, ladies and gentlemen.

2 You know the entire system that was set up here of
3 stated asset, stated income loans, liar loans, whatever you
4 want to call them -- the whole system was weird from the start.
5 It was full of holes. The whole system that was created,
6 created a scenario where bad information was just bound to
7 happen. You've heard that from some of the witnesses. You
8 were bound to get bad information. You were bound to have
9 people inflating their income.

10 And I'm not saying it's right to do that. I'm not
11 saying anybody's ever excused from lying on a form. But you do
12 have to come back to the question of who filled out these forms
13 and who's responsible for making sure they were filled out
14 correctly. And it wasn't Robert Brooks, ladies and gentlemen.
15 Time and time again the witnesses had to admit that he's not
16 involved in the loan application process. There's no specific
17 witness who ever said: I saw him fill out a loan app., and I
18 saw him deliberately put in bad information. So if there's bad
19 information in there on the loan app., it's clear who you
20 should hold liable, the borrowers who filled it out or the
21 borrowers who had someone else fill it for them and reviewed it
22 and didn't make the corrections and just let that bad
23 information stay in there.

24 So there were problems built into the system from the
25 beginning. And it's not fair to blame Robert Brooks for all

1 these problems in the system that were there.

2 And I'll go even further, ladies and gentlemen. If
3 the system was set up so that there was a legitimate, legal way
4 to engage in transactions that some people might consider a
5 loophole, it's not illegal to take advantage of an actual legal
6 loophole. Some people may not like it or think it's weird or
7 think it's strange. But if the rules just weren't set up to
8 catch certain things and nobody was asking the right questions,
9 it's not fair to pick somebody out and say: Well, you should
10 have disclosed it. You had the duty to tell all those people.
11 There has to be some specific rule or guideline or law or some
12 form that says that they have to disclose it. And in this case
13 there just wasn't such a form.

14 Now, I'm going to take a minute here, and I'm going
15 to put up an exhibit that we think kind of explains the various
16 roles that the people played in this case. And it will help
17 explain why we think certain people should be taking
18 responsibility for their actions and not Robert Brooks. And it
19 may help refresh your memory about some of the witnesses and
20 what we believe their testimony was and the rules in this case.
21 So let me just make sure I get this set up correctly.

22 See here. Okay. So our argument to you is that
23 Robert Brooks was basically an investor/entrepreneur. Whoops.
24 There we go. Okay. So from our perspective, what was he doing
25 in this case? What was he primarily doing? Well, again, he

1 bought and sold homes for profit. He did put up some funds to
2 start Pro Processing and Progressive Title. Again, keep in
3 mind he had no professional training or licenses in real
4 estate.

5 The government keeps wanting to paint this picture of
6 him as this real estate mogul, and he knew everything, and,
7 therefore, he should be held to this high standard. But,
8 again, he had no professional training. He was basically
9 working on on-the-job training.

10 And we believe there's clear, solid evidence that he
11 did rely on other professionals to do their part and to speak
12 up if something he was doing wasn't the way it was supposed to
13 be done in the system.

14 Then we get to one of the other witnesses in the
15 case, Cheryl Brooks. Well, Cheryl Brooks, the evidence shows
16 she was primarily the bookkeeper. She was the one who kept
17 track of the financial records. She's the one who turned them
18 over to the CPA's office to do the taxes. And she actually
19 became a licensed mortgage broker in 2007.

20 Now, this gets us a little bit into the tax issue
21 here. And I'm going to address it a little bit later. But
22 just keep in mind that, again, she was the one who was
23 apparently in charge of the books from her own testimony.

24 So let's talk about Mr. Richard Howard a little bit
25 more. Now, I have put up here at the top real estate lawyer,

1 and that's disputed by the government. They don't call him a
2 real estate lawyer. Now, he did get up on the stand and
3 testify that he does practice white collar crime. And he did
4 concede that includes mortgage fraud and mail fraud cases, but
5 he insisted that he's not officially a real estate lawyer.

6 But you might also recall that he admitted he took a
7 check from Mr. Brooks for \$200,000. And at the bottom of the
8 check it said "attorney's fees." And he also admitted that he
9 followed Mr. Brooks around from meeting to meeting and answered
10 his legal questions. So what was going on at those meetings?
11 What kind of questions was he answering? The prosecutor says:
12 Well, he said it was just about corporate stuff. I submit to
13 you that just doesn't add up, ladies and gentlemen. He's
14 following Robert Brooks to these meetings. He knows what kind
15 of activities Robert's involved in. He even got other people
16 to come in and buy properties on his own. He knew exactly what
17 was going on with the system Robert set up. And he had a legal
18 duty to speak up and tell Robert if something wasn't being done
19 right.

20 Also of note, he was the owner of Progressive Title &
21 Abstract. And he seems to take absolutely no responsibility
22 for what happened at Progressive Title & Abstract. The
23 government wants to put more of the blame on Robert Brooks, and
24 he wasn't even an owner of the company.

25 We also heard a little bit about some of the real

1 estate agents involved in this case, Joey Cooper and Lisa
2 Richard. And I don't have a lot to say about them, to be
3 honest with you. They just -- you know, they helped him find
4 buyers and other professionals. But it is important to note
5 they were also licensed professionals. And it was fair of Mr.
6 Brooks to rely on their advice throughout this process. And if
7 he was doing something that didn't look right to them, I think
8 they should have spoken up.

9 Then we also have a lot of buyers who -- we didn't go
10 through the details on all the buyers. But, generally
11 speaking, we think the evidence showed that the buyers either
12 filled out the loan applications or at least reviewed them and
13 said: Okay, I'll go ahead and sign off on this. And I put
14 here they did it with the assistance of a loan officer. And in
15 all honesty, from what I've seen, there wasn't a whole lot of
16 assistance provided, unfortunately, to these people. The loan
17 officers were supposed to interview them. But in a lot of
18 cases they apparently didn't. They just passed it off to
19 somebody else or had them sent off through the mail. And I
20 think if there was any problems with the loan applications,
21 those are the people you should hold liable, the people who
22 signed the applications affirming the truth.

23 Now, we also have various other people involved in
24 the case that you remember, loan officers. Some of these names
25 you may recognize. Others you may not. You recognize LeDale,

1 I'm sure, and Mr. Adkins and Ms. Whittington. And, again,
2 their job was to collect and enter loan application information
3 and go over the loan terms with the buyer.

4 And they worked with the banks to help them make
5 money for the loans. And, again, they're licensed
6 professionals. Once again, if there's a problem with the loan
7 application, I say hold the licensed professionals liable.
8 Don't hold Mr. Brooks liable. These are the people who were
9 signing off on these documents.

10 Then you have the loan processors: Yvonne, Niesha,
11 Tamatha, Pro Processing. Generally speaking, they put
12 paperwork together. They sent out some requests for appraisals
13 and title commitments. They were the ones who would call
14 out -- or send off the requests for verifications of
15 employment. And I kind of went a little too fast there.

16 But the government's argument, or one of their
17 arguments in the case, is that Robert Brooks controlled Pro
18 Processing. They started off, again, saying, well, nobody
19 could fire anybody there, or nobody could fire Robert, and
20 Robert could fire anyone. They had to concede later on that
21 wasn't totally true because, again, he did have a partnership
22 with Yvonne -- Robert, Yvonne and Cheryl, they all own that
23 company jointly.

24 So the idea that these people are partners and that
25 one person can somehow control them all anyway, we just think

1 that just doesn't add up. That is based on a lot of negative
2 assumptions about Robert. And it wasn't proven with the
3 evidence in this case.

4 So let's talk about the appraisers a little bit. We
5 had Mr. Lester, Jennifer Coleman and Sherri Kujan. Their role
6 was to research the owner of the property, estimate the fair
7 market value of the property. And keep in mind, again, they're
8 licensed professionals.

9 Now, the government's pointed out a few things about
10 these appraisals that I totally understand. I understand why
11 they're pointing it out, and it looks weird. It looks even
12 suspicious, I'll say. Let's start with Mr. Lester. So Mr.
13 Lester says that in addition to doing the appraisals on these
14 properties, he got a finder's fee from Mr. Brooks for doing the
15 appraisals. But keep in mind, ladies and gentlemen, who was it
16 who came up with the idea for that finder's fee? Was it Mr.
17 Brooks? Did he go to Cedric and say: I need somebody who's
18 going to lie on my appraisals. I need somebody who's going to
19 inflate them. How about I pay you 10,000 right off the bat?
20 That's not the way it happened, ladies and gentlemen.

21 This appraiser approached Robert, and he asked him
22 for money. And I'm sure Mr. Brooks would have preferred not to
23 pay the money, but he felt it was a good deal. And he said:
24 Well, these are, you know, properties I can buy cheap and sell
25 for good money. All right. I'm in.

1 Now, Mr. Lester should not have taken that money and
2 done the appraisal. But who should be held liable for that
3 mistake, for that lack of independence? Mr. Brooks, again? Is
4 it always his fault? He's got to take the fault for that? No,
5 I think it's fair to blame Mr. Lester for that. And he is
6 being held liable, as you can see. He's already been charged
7 and convicted in this case.

8 So we'll talk about Sherri Kujan next. And I'll be
9 honest. I was a little bit surprised with her testimony. She
10 did get on the stand and testify that she had an appraiser, and
11 she did the appraisal for one of the condos -- or I'm sorry.
12 For a house. And she said that Mr. Brooks didn't ever like pay
13 her to inflate the appraisal or offer to pay her X money to
14 inflate it. And I asked her if she stood behind the
15 appraisals. She said, yes.

16 Well, then the government produced some checks, a
17 significant amount of checks. And I don't have all the answers
18 to that, ladies and gentlemen. And we didn't get into all the
19 details behind those checks, and we didn't bring in her
20 husband. So we don't know what's going on with all that. The
21 implication for the government is, aha, look at all these extra
22 payments. Well, there's only one thing to think from the
23 government's perspective. There's only one way to view that,
24 which is must be Robert Brooks' fault. Must be a payoff for a
25 bad appraisal.

1 But that's not the only way to look at it. Some of
2 those checks actually said that they were being paid for
3 consulting fees and things like that. And the checks that were
4 produced did not have the actual name of that property on it,
5 XXXX XXXXX XXXX.

6 So you could assume against Robert, can make the
7 worst assumption and say, well, there you go. Must have been
8 for a payoff. But that's not necessarily true. You could
9 continue to give Robert the benefit of the doubt and say, well,
10 we just don't know. It's suspicious, looks weird, not proper.
11 Ms. Kujan should not have received any money from Robert if she
12 was going to do the appraisal, no extra money on the side. But
13 it's not necessarily Robert Brooks' fault, and it doesn't
14 necessarily mean the appraisal's bad, either. Some of these
15 people could have come up with an appraisal of 450 anyway and
16 tried to just get extra money out of Robert.

17 We had Ms. Jennifer Coleman testify, and she believed
18 that the value of her appraisal was fair as well. Now, there's
19 problems with these appraisals. I'm not going to argue that.
20 There were problems and mistakes. But it's not fair to hold
21 Mr. Brooks liable for these mistakes of the appraisers. Hold
22 them liable.

23 So we have the title company, too, ladies and
24 gentlemen. They're responsible for preparing -- researching of
25 the property as well, preparing title commitments and HUD

1 statements, setting up and conducting closings. And, again,
2 they have people in there who are licensed agents, ladies and
3 gentlemen. And if they're not preparing the HUDs correctly,
4 which is a big issue in this case, then they should be held
5 liable for that. It's not always Mr. Brooks' fault when
6 somebody else screws up on the paperwork.

7 Now, the government's made a big deal about these
8 HUDs. As you know, there's 40 HUDs you've got there. And
9 their whole premise of their argument seems to rely on the fact
10 that it says "cash from borrower." And every time it says
11 "cash from borrower," they're saying it really wasn't from the
12 borrower, ladies and gentlemen. It was from the seller. And
13 I've gone back and forth with these people over whether that's
14 meant to be taken literally or not. Some people say, oh, yes,
15 cash from borrower means literally.

16 And I said: Well, maybe could it be cash given to
17 the borrower or paid on behalf of the borrower? And they told
18 me: Nope, this is literally cash from borrower. And then I
19 say: Well, what about the term cash? Is that meant to be
20 taken literally? And then they back off and say: Well, no,
21 not that part. That part can be cash, check, money order, et
22 cetera. But the rest of it, absolutely literal, and everybody
23 should know that. Even an unlicensed professional like Robert
24 Brooks should know better. And that seems to be the heart of
25 their case.

1 We have another important player in this, ladies and
2 gentlemen, which is the banks. And I want you to keep in mind
3 that the evidence showed that they promoted and put out these
4 subprime mortgages and no doc loans. They had a special
5 department to review all the paperwork in this case. They had
6 the final authority to accept or reject every single one of
7 these loans if they wanted to. And they could have asked for
8 more information if they wanted on every single one of these
9 loans, ladies and gentlemen.

10 Just a moment. May I ask how I'm doing on time,
11 Judge?

12 THE COURT: Let's see. You've used 30 minutes.

13 MR. GORDON: Excuse me. Now, let's talk a little bit
14 about the witnesses the government's put up here in this case.
15 I believe I told you in the beginning that I expected most of
16 the government's witnesses to be people who have taken plea
17 bargains in this case, have already admitted that they're
18 guilty, former business associates of Robert or investors who
19 are going to be upset at him, going to be disgruntled because
20 they lost money, and then maybe some government agents. And
21 that's been the vast majority of the witnesses that you've seen
22 for the government. Not all. They did bring in some bank
23 representatives.

24 But it probably won't surprise you the bank
25 representatives have their own bias in this case as well. And

1 instead of taking the blame for not reviewing their paperwork
2 properly and offering these crazy, ridiculous loans, they want
3 to point the finger at somebody else. And they're more than
4 happy to come in here and point the finger at Robert Brooks and
5 say: Well, he's the big person involved, and he's the
6 ringleader, and let's go after him.

7 And I had this debate with every single one of them
8 when they said: We have a right to know all this stuff. We
9 had a right to know that he was buying and selling the
10 property. We had a right to know that he was making payments.
11 And I kept saying: Well, where is this right to know? Where's
12 the paperwork that says that he had to tell you, Mr. Brooks
13 specifically? And, again, they couldn't come up with the
14 details or documents to show me why it was his responsibility.
15 And whenever I asked him, I said: Well, couldn't you have just
16 picked up the phone and called and checked this verification of
17 employment yourself? Couldn't you have just clicked on your
18 mouse and gone to Topaz Townhomes and seen that they were
19 selling them for 250,000? Well, that was too much for them. I
20 guess they just couldn't handle that. They just didn't have
21 the time or resources to do that, apparently. That seems to be
22 their response.

23 So what you have, also, from the government witnesses
24 time and time again is trying to shift responsibility away from
25 themself and shift it to Robert Brooks, and say: Robert told

1 me to do it. Robert directed me to do this. And that's a
2 fundamental point in this case, ladies and gentlemen, because
3 there's -- there are documents with Robert Brooks' signature on
4 them. But, generally speaking, they're not fraudulent
5 documents. The only one that's arguably fraudulent from the
6 government's perspective is the HUD. If you accept that that
7 cash from borrower is wrong, then that's probably the only
8 document that Robert signed that you could say was wrong.

9 And so a big part of their case is relying on blaming
10 Robert for what everybody else did. Every time somebody else
11 signed a paper or they put wrong information in, well, let's
12 just tie it right back to Mr. Brooks and say it was all his
13 fault. And that's really critical when you look at the mailing
14 part of this case.

15 And, you know, the government says there probably
16 wouldn't be that much dispute about the mailings. Well, he's
17 right in a certain sense. I don't dispute the papers were
18 mailed out, but I do dispute that they were mailed out by
19 Robert Brooks. And I submit to you that when you saw those
20 papers being mailed out, Robert Brooks' name was not on any of
21 those papers that were mailed out to the mortgage companies.

22 Now, they're trying to say he's responsible anyway
23 because he's part of this conspiracy. So if anybody else sends
24 papers out that helps promote this alleged fraud, then he's
25 responsible automatically. But my argument is that there is no

1 conspiracy; that Robert did not specifically agree to be a part
2 of any illegal activity. And so if you don't find that there's
3 a conspiracy there, you can't hold him liable for that
4 particular -- for those transactions. And if you take that out
5 of the mix, there's, in my opinion, no mail fraud.

6 Just give me a moment, please. So let me go ahead
7 and talk to you about the elements of the jury charge that
8 you're going to be looking at. Mail fraud is defined as using
9 the mail to carry out a scheme to defraud. But it is important
10 to remember that you cannot convict the defendant of such a
11 crime unless you find that he's guilty of all the elements.
12 Now, I'm not going to ask you to read every single one of
13 these. But let me just have a second here.

14 All right. So the first element you have to look at
15 is whether or not the defendant knowingly created a scheme to
16 defraud. I, right there, have a big dispute with the
17 government on this case. I don't think he knowingly created a
18 scheme to defraud. I think he knowingly created a real estate
19 business, and he knowingly created a real estate business that
20 was trying to make a profit and be successful and follow the
21 rules that existed then. And some of the rules were weird and
22 sloppy, and some of the advice he was given by people to do
23 things, in hindsight, probably shouldn't have done.

24 And specifically keep in mind that there was bank
25 officials throughout this case who gave advice to people to

1 leave information off loan apps. Don't put this on there. Do
2 put this. I mean, they were heavily involved in this process,
3 and they were directing people to specifically leave out
4 information in certain cases. And I think it's fair that
5 sometimes people might get mixed up and think okay, well, if I
6 can leave that off, maybe I can leave this other part off. It
7 doesn't make sense for the banks to come in here and argue now
8 that they were misled because of that.

9 So, again, you have -- the government will have to
10 prove all these particular elements of the crime. And I'm not
11 going to go through each one in detail, but there's a few I
12 think that are more important to focus on. What are the second
13 elements? It's just important to remember that the government
14 has to prove a specific intent to defraud. It's not enough to
15 prove that Robert Brooks had an intent to make money or he had
16 an intent to buy and sell property legitimately and other
17 people did things behind his back that they shouldn't have.
18 That's not enough. They have to show that he had that specific
19 intent. And that's why I say over and over again they seem to
20 be basing it on assumptions, rather than proof from witnesses
21 about specific acts that he engaged in.

22 In terms of the mail fraud, again, have to prove the
23 defendant mailed something or caused another person to mail
24 something. I submit to you there's no proof that he caused
25 anybody to mail anything. They mailed these things of their

1 own freewill. Yvonne Salazar was a part owner of the company.
2 How did Robert force her or cause her to put these things in
3 the mail? I submit to you the evidence is just not there to
4 support these charges.

5 We also talked -- I'm sorry. One of the elements
6 they also have to prove is that if there was a scheme to
7 defraud, it had to involve some kind of material
8 representation. And what that means is if there was something
9 false, but it really was a minor typo and it didn't matter to
10 the banks, then you can't really hold it against him. And I do
11 submit to you that when it came to the actual income stuff, if
12 income information was wrong, I submit to you that really
13 wasn't material to the bank's decision. You may recall forms
14 that I went over with one of the bank reps. And it
15 specifically said: We will not require, not even consider, a
16 person's income. If they're not even going to require or
17 consider it, I put to you it was not material to their
18 decision.

19 Again, intent to defraud means an intent to deceive
20 or cheat somebody, not just an intent to make money. And I
21 hope you can distinguish between those things. You don't
22 automatically assume, because Robert intentionally did a lot of
23 things that he felt were legal and legitimate, that that means
24 that he intended to commit fraud.

25 In regards to the false statement, it's just

1 important to remember it's got to be material. So, again, it
2 kind of goes back to what I said a minute ago. If somebody
3 makes a false statement in a document, but it really didn't
4 affect the other person's decision, then it's not supposed to
5 be counted against them.

6 So I put it to you that, really, the government has
7 not proved the intent portion of the charge. They have not
8 specifically proved that he had an intent to defraud people.
9 You can make assumptions that that's what he did and say:
10 Well, I think maybe he did. But remember, the government still
11 has to prove this case beyond a reasonable doubt. And if you
12 go back there and you have a reasonable doubt and you say:
13 Well, I -- you know, I'm suspicious, and this guy might be
14 guilty. And you go: But, on the other hand, I mean, there are
15 other arguments that are legitimate that maybe he's not guilty.
16 Then you have a duty to give him the benefit of the doubt and
17 vote not guilty.

18 We've gone over this part a little bit here. I'm
19 going to move to another slide real quick. I want to talk to
20 you a little bit about the tax case as well. Again, the
21 government's got to prove each element of the charges that are
22 going to be given to you, or you have to render a verdict of
23 not guilty.

24 The government -- the charge talks about the
25 defendant assisting, procuring, counseling or advising the

1 preparation of a false return. Well, ladies and gentlemen, I
2 put it to you that Robert Brooks did not know that what this
3 CPA proposed was false; that it was possible that maybe you
4 could do this deduction and maybe pay it off later. And I
5 don't know -- I mean, it doesn't make sense to me that -- this
6 particular idea that the CPA came up with. And you've heard
7 from the other expert that this was just flat out bad advice.
8 And I think it's fair, when you're looking at did this guy do
9 it on purpose, was he intentionally trying to defraud the
10 government or did he just get really bad advice, I think it's
11 legitimate to say: Yeah, he got bad advice. It's not fair to
12 hold him liable for taking that bad advice.

13 But the government is -- sorry. Just a moment here.
14 The key that we would have to -- the government would have to
15 prove in this case the defendant knew the statement was false.
16 And I think there's some legitimate debate about that. Once
17 again, the government wants you to assume the worst about
18 Robert Brooks; that, oh, he absolutely knew that that deduction
19 was false and there's no way he could deduct that 475,000. But
20 that hasn't been proven, ladies and gentlemen. That's
21 assumption and speculation. What has been proven and is
22 undisputed is that he got bad tax advice.

23 And, again, the government, we think, has not put up
24 enough evidence to show that he willfully assisted in the
25 preparation of this return with the specific intent to violate

1 a known legal duty. That's why we believe it is fair to render
2 a verdict of not guilty.

3 And what's also important here is that you may
4 remember the testimony of Cheryl Brooks. And I asked her about
5 this, and she seemed to say that initially she thought this was
6 okay. And I asked her: Wasn't the plan to delay payment of
7 taxes, not just avoid it completely? And she seemed to confirm
8 that. And, once again, it's clear that Mr. Scheller, the CPA,
9 suggested this deduction, not Mr. Brooks. And I think it's
10 clear that Mr. Brooks did not counsel his own CPA; that the CPA
11 counseled him and advised him, advised him poorly,
12 unfortunately.

13 So, again, we believe that they will not be able to
14 prove these essential elements of their case, and that if you
15 follow your oath as a juror, you'll give him the benefit of the
16 doubt, and you will vote not guilty on these charges.

17 I'm going to skip over a couple of other issues
18 because I think we're probably going to get short on time. But
19 the good faith defense is really important in this case. And
20 as you have been told, and the charge tells you, if Robert
21 actually had a good faith belief that this stuff he was doing
22 was okay and approved by the banks or, you know, that somebody
23 else told him was okay, then it is a defense to the charges.
24 And even though you think all the things he did were bad, if he
25 didn't know it and he was relying on other people and getting

1 more bad advice, then you have a duty to vote him not guilty.

2 Now, it's going to be up to you whether he
3 legitimately held this belief or he actually knew the truth.
4 That's up for you to decide. But if you do accept our argument
5 or you think it's at least a legitimate argument and you have
6 some reasonable doubt, then you need to give him the benefit of
7 that doubt and render a verdict of not guilty on those charges.

8 And I want you to look at the bottom portion, if you
9 don't mind, real quick. I think it's important to emphasize,
10 and this is in your charge, an honest mistake in judgment or an
11 honest error in management, even, does not rise to the level of
12 criminal conduct. And I ask you to keep that in mind when
13 you're making your decisions.

14 And, again, the burden of proof in this case does not
15 rest with us. We don't have a duty to prove anything. They
16 have to prove that there was a specific intent to defraud. And
17 when I say prove, I mean prove it. I don't mean make
18 insinuations about it, like Mr. Lester by saying: Well, wasn't
19 there some kind of, you know, lack of independence, or didn't
20 you kind of feel like there was an insinuation maybe you should
21 inflate it? That's not good enough evidence to convict him in
22 my opinion, ladies and gentlemen.

23 Cedric Lester, I specifically asked him: Did Robert
24 specifically ask you to inflate these appraisals? And he said
25 no.

1 And so you have there a lack of that specific intent
2 to commit fraud. And you have a lack of that concrete, solid,
3 hard evidence that you need to convict a person in this case,
4 ladies and gentlemen.

5 And the same thing applies on the tax charge as well,
6 that Mr. Brooks is entitled to a defense in that respect if he
7 relied on the advice of his attorney, and if his belief was
8 inconsistent with a showing of intent to defraud. And there's
9 some -- elements there. I'm not going to review all of them
10 with you.

11 So, ladies and gentlemen I think this case comes down
12 to a few big questions. First of all, were the specific things
13 Mr. Brooks doing -- were they all prohibited? And I think,
14 clearly, they were not. Were some of them prohibited? Well,
15 that's even debatable, ladies and gentlemen. I've asked the
16 witnesses to show me where the things Robert were doing should
17 have been -- you know, there was something prohibiting him from
18 doing these things. And they can't tell me. They just keep
19 saying: Well, it just looks bad, and they should have known
20 that he was doing it. They should have known he was doing it.
21 But there's no duty that we found that he had to disclose it to
22 these people.

23 And then you've got to ask yourself: Well, if the
24 banks should have known and they had a right to know, who was
25 supposed to tell them? Was it really his burden? Was it

1 really up to Robert to do it? No, it just -- the evidence
2 doesn't show that he had the duty to do it.

3 Now, were other people working for the bank sloppy,
4 and did they fail to do their jobs, and were they supposed to
5 tell the bank? Probably so. But those people are not on trial
6 here today, ladies and gentlemen. It's Mr. Brooks.

7 So the other question you've got to ask yourself,
8 again, is, let's say that some of the stuff was wrong,
9 shouldn't have been done. Did Mr. Brooks really know it was
10 wrong? Have they really proven that? They've argued it, and I
11 can see some people might assume it. But have they proved it
12 beyond a reasonable doubt, ladies and gentlemen? I don't
13 believe they have. I don't believe they have.

14 Then you've got to look at some of the other issues.
15 Well, let's say that some of these things were wrong. What if
16 Robert did them because he relied on other people? Well, if
17 that is true, ladies and gentlemen, that right there is a legal
18 defense. And that's enough for you to say, boy, this guy did a
19 bunch of stupid things. I can't believe he did this. But you
20 know what? He did rely on other people, and they should have
21 spoken up and told him what to do. And, boy, this guy just
22 seemed like he got bad advice from everybody he dealt with.

23 And so if that is the case, ladies and gentlemen,
24 then that right there is enough for you to go ahead and render
25 a verdict of not guilty on all these charges.

1 Any idea on time, Judge?

2 THE COURT: Yeah. You've got 15, 20 minutes.

3 MR. GORDON: Okay. And I also want to emphasize,
4 ladies and gentlemen, that it's important to take into
5 effect -- into account the expertise and training these people
6 had and did not have. Again, it's undisputed that Robert had
7 no formal training in real estate. Now, they say that, you
8 know, he learned as he went along, and that he knew all this
9 stuff because of all the many years he'd been involved in this.
10 But that's not necessarily true. He could have been involved
11 in this for many years but still just had a layman's
12 perspective on everything, without the specific training that
13 you get to become licensed in the laws and the rules and the
14 regulations. You can do it for ten years, and you still might
15 not know more than the average person.

16 And so it's important to distinguish the roles of
17 these people and consider the fact that he was not specifically
18 licensed or trained. If he was licensed or trained and then he
19 -- you know, there's evidence that he didn't follow the rules,
20 that's a different story. But, again, in this particular case
21 they haven't proven that, ladies and gentlemen.

22 Now, as has been explained to you, the prosecutor's
23 going to be able to get up here in a few minutes, and they're
24 going to make another statement. And I will not get another
25 chance to talk to you. And the prosecutor might say a bunch of

1 things that I really disagree with. And if I had another
2 chance to get up here, I might be able to knock down all those
3 arguments. But I won't be able to. So I'm just going to have
4 to trust you to take everything that is said to you with a
5 grain of salt and not just believe it because I say it or
6 because the prosecutor says it. You have the evidence. You've
7 heard the witnesses. I'm sure you're intelligent enough people
8 to make the right decision.

9 But I do urge you to remember the standards that
10 you're supposed to follow as a juror. It's not a 50/50
11 proposition. If you go back and you say, well, I'm not sure if
12 he's guilty or not. I think I'm leaning a little more guilty,
13 that's not enough to convict. If you're leaning a little bit
14 guilty or a lot guilty, but you have reasonable doubts, you've
15 got to continue, even to the end, to give Mr. Robert Brooks the
16 benefit of that doubt. And I hope that you will follow your
17 oath as jurors and do that. And I thank you, again, for all of
18 your time.

19 THE COURT: Mr. Harris, you have 15 minutes.

20 MR. HARRIS: Thank you.

21 THE COURT: Okay. All right. Mr. Harris, you may
22 proceed. Thank you.

23 MR. HARRIS: Thank you, Your Honor.

24 **CLOSING STATEMENT**

25 MR. HARRIS: Ladies and gentlemen, let me begin with

1 where I agree with Mr. Gordon, and that is it is a high burden,
2 beyond a reasonable doubt. It's not the preponderance of the
3 evidence where you're pretty sure or more likely than not.
4 It's not the clear and convincing that seems -- it's darn sure.
5 And are you darn sure that he has -- that Mr. Brooks has done
6 that which we allege? That's the standard. If you find it,
7 find him guilty. If you don't, please acquit him. That is
8 what I'm asking you to do.

9 Now, I submit that Mr. Gordon is trying to create
10 reasonable doubt in a gallant effort where none exists, not
11 when you look at the instructions, not when you look at the
12 totality of the situation, the totality of the dealings.

13 Not to throw out yet another movie, but I'm also --
14 I'm almost reminded of -- you know, Mr. Gordon is essentially
15 saying, pay no attention to the man behind the curtain. Keep
16 watching the great, you know, wonderful Oz. Pay no attention
17 to the man behind the curtain. The man behind the curtain is
18 the manipulator, and that is Robert Brooks.

19 And the instructions are clear. He did not have to
20 do everything himself. He did not have to sign this document
21 or that document. The question is: Did he know that false
22 representations were being made? Yes. Was that part of his
23 plan? Yes. Did he conspire with others to bring it about?
24 Yes.

25 Mr. Gordon complains that there's no evidence of a

1 criminal manifesto; that they didn't sit down and say: Hey,
2 kids, let's put on a crime. Well, the instructions address
3 this. It clearly says, the government need not prove that the
4 alleged conspirators -- I'm reading on Page 10 -- that the
5 alleged conspirators entered into any formal agreement, nor
6 that they directly stated between themselves all the details of
7 the scheme. The government need not prove that all the details
8 of the scheme alleged were actually agreed upon or carried out.

9 So no, not everyone knew everything. Maybe not even
10 Mr. Brooks. Maybe he found out after the fact about Whiteout.
11 But he certainly knew enough of the false representations, the
12 false pretenses, the false promises that are being made to the
13 lenders to be found guilty.

14 Similarly, he may not have counseled or advised the
15 tax return -- notice that those were the only two words
16 underlined. What was not underlined was aided or assisted in.
17 And here's the thing, it cannot be reliance on the suggestion
18 of the accountant just because it was the accountant who came
19 up with the how we're going to do it.

20 The defendant had the benefit of the before and
21 after. He saw the draft tax return that showed the -- to them
22 the ridiculous amount of income tax that they were going to
23 have to pay on their true income, and balked. And when they
24 balked to their CPA, it's their CPA who, according to Cheryl,
25 asked: Well, don't you have some other company, maybe a

1 dormant company that you can shove off some kind of expense to?
2 It's not the accountant who comes up specifically with 475,000.
3 There's no information of that, that he would come up with it.

4 Or how about Amadeus, Inc.? Where does the
5 accountant even know the name? No, that has to come from --
6 who? From the defendant. He knew that they were going to be
7 lying on their tax returns. He knew the returns were going to
8 be filed. That's all it takes for you to find him guilty of
9 that. The elements have clearly been met. The elements are a
10 breakdown of those two broad brushes, but it's there.

11 I neglected to cover this when I was talking about
12 not knowing everything. But the Court already instructed you
13 and this is at the top of Page 10, just above what I said: One
14 may become a member of a conspiracy without knowing all the
15 details. If the defendant understands the lawful [sic] nature,
16 that is sufficient to convict him. Well, I submit that this --
17 that this evidence showed that he knew far more than just the
18 unlawful nature.

19 Made a big -- Mr. Gordon made a big point about the
20 few witnesses that said Yvonne ran Pro Processing. Well, I
21 submit that, yes, the testimony is clear. Yvonne operated Pro
22 Processing, but the emails show that she is clearly reporting
23 to the defendant, even on such things as, we need different
24 employment for Brenda Hardaway.

25 He talks about -- "he" being Mr. Gordon, excuse me --

1 talked about the conversation with Cedric Lester and his
2 question to Cedric Lester: Did Mr. Brooks ask you to inflate
3 the appraisals? And he hangs his hat on the answer that was:
4 No. But do you remember my redirect question? And that was:
5 Well, were those words spoken? No, those words didn't have to
6 be spoken. We had an understanding, a tacit understanding.
7 Again, the circumstances show that the defendant knew that
8 these appraisals are false.

9 How can they not be false, when you or I could have
10 walked into Topaz and bought the same condominiums ourselves
11 for the mid-200s? We couldn't have turned around and sold them
12 to a willing buyer for 450 when the next person could have
13 walked into Topaz and bought the comparable unit for 260. It
14 just defies logic. And you've been told that reasonable doubt
15 is based on logic, common sense. That's all we're talking
16 about, applying logic and common sense.

17 The defense also wants to put a big point on the
18 notion that it was the borrowers who filled out. It was the
19 borrowers who were responsible for the loan applications. But
20 the evidence is clear that the borrowers did not fill them out;
21 that the defendant's people did. Now, ask yourself, again,
22 this, logic and common sense: Why on earth would the
23 defendant's people knowingly put false information into the
24 applications? Why on earth, if they are not engaged in a
25 conspiracy with -- who? With the defendant. It's the

1 defendant who financially benefits from these flips that go
2 through.

3 You know, he -- Mr. Gordon talks about the government
4 wanting to have it both ways. I submit that, actually, he's
5 the one who wants to have it both ways because he put an expert
6 on to talk about how it's the duty of the loan originator to
7 get all this stuff right. And when they say "loan originator,"
8 you know, don't look at the man behind the curtain. Look at
9 the great and wonderful Oz. They're pointing to the likes of
10 Hector Adkins and Penelope Whittington and LeDale Coles and
11 Yvonne Salazar. But in this case who is the ultimate loan
12 originator? Who's coming up with the properties? Who's coming
13 up with the borrowers? Robert Brooks. Clearly, he is
14 controlling all these participants.

15 He focused on the attorney's fees, the \$200,000
16 attorney's fees. But remember what Mr. Howard said, how that
17 money originated; that that was the proceeds that he received
18 back after closing from the defendant, after the defendant
19 flipped to him his own home that he currently lives in, and
20 that it was written to make it look legal. Those words just
21 reek. Make it look legal.

22 We have heard a lot of blame the victim, blame the
23 victim. Let's blame the lenders. Well, a couple of things
24 there. First off, he says the lenders could have done extra.
25 They could have gone on the Topaz web site. Folks, again, use

1 logic and common sense. Their own expert, Mr. Ives, testified
2 that because of the huge volume of home sales that were going
3 on in the mid-oughts, that that was why a market had been
4 created for all these intermediaries, all these loan brokers to
5 suddenly sprout up. And you heard, time again, we don't have
6 time to go out and verify.

7 I mean, being defrauded is not the prevailing mode.
8 If it were the prevailing mode, I mean, think about it. Would
9 you be willing to give that waiter at the restaurant, who's
10 walking away with your credit card, your credit card? Would
11 you be willing to give the cashier at the HEB your check with
12 your bank account number and your name and address? No. Being
13 defrauded is not the normal operating mode. So the notion of
14 putting it on the lenders, that they could have looked further,
15 I submit to you is, again, don't look at the man behind the
16 curtain.

17 We heard about all this information. We don't want
18 to know this. We don't want to know that. Yeah, it was
19 probably pretty stupid. But here's a key thing: If info was
20 allowed to be left blank, leave it blank. But if the info is
21 filled in, if you put in an employer, if you put in \$12,000 a
22 month as income, yes, they said, we are relying on that to be
23 truthful and complete.

24 Similarly with the VODs. We don't want to know --
25 well, if a VOD was done, this was not -- you heard this was not

1 a stated asset loan. They were looking to verify. Granted,
2 maybe a little on the quick by just going that route, rather
3 than asking for bank statements. But, again, logic and common
4 sense, you can't go putting \$90,000 into some stranger's
5 account to make it pass muster. You know that that's a false
6 representation that is being made to a lender.

7 Yeah, it's pretty -- maybe it was stupid programs by
8 the lenders in that time. But I'll submit to you, it's pretty
9 stupid if I were to leave my car in the Park and Ride
10 underneath 1604 and 10 with the keys in the door. That would
11 be pretty stupid of me. But that doesn't give the car thief
12 the right to come along and steal my car.

13 If I go off for two weeks of vacation and I forget to
14 cancel the Express-News delivery, I leave my front door ajar,
15 that's pretty stupid. But it doesn't give the burglar the
16 right to come in and steal, you know, my china and my TV and
17 kick my dog. So let's not blame the victim.

18 They also point to -- Mr. Gordon also points to,
19 well, there wasn't a rule here that said you can't do this, and
20 there wasn't a rule here that said you can't do this, and there
21 wasn't -- but, again, I ask you to look at the totality of the
22 circumstances. Look at the totality of the transaction.

23 And I'll give you another example. Nothing illegal
24 about me driving a car. I'm a licensed driver. Nothing
25 illegal about me picking up my friend in my car. Nothing

1 illegal about me taking my friend to the bank in my car.
2 Nothing illegal about me waiting in my car while my friend goes
3 into the bank. Nothing illegal about me driving my friend away
4 from the bank when he comes back to the car. And I can tell
5 from a smirk or two I think you know where I'm going.

6 If I know that my friend is going in there to rob the
7 bank, I'm the get-away driver, and I know I'm the get-away
8 driver, and I'm every bit as guilty, even though I'm not the
9 one who walked in the bank. I'm not the one who pulled the gun
10 or handed the note that said: This is a stickup. Give me the
11 money.

12 It's the totality of the circumstances. And I submit
13 to you that while we think of crime as being done with the gun
14 at the bank or the Quickie Mart, that a crime like this, here's
15 the weapon of choice, a pen.

16 THE COURT: Three minutes.

17 MR. HARRIS: Blaming the victims for not looking
18 further. And yet, we heard that if there is collusion between
19 the title company, the processor, the buyer, the seller, the
20 appraiser, all of whom are supposed to be independent at arm's
21 length from each other, there will be no red flags for the
22 lender to start looking into. And the defendant knew this. He
23 took advantage of a weakness in the system. He devised a
24 scheme to defraud, and he conspired with others to help him
25 carry it out. And when it turned out to be so very lucrative,

1 he had to cheat on his taxes to boot.

2 I submit to you that we have met that high burden.
3 And I ask you to find him guilty of each of the counts going to
4 you. I thank you for your time, your attention, your service.
5 I ask you to do a very difficult thing. I know it's a
6 difficult thing, but I submit it's your sworn duty.

7 THE COURT: Ladies and gentlemen, the case is now in
8 your hands. You-all, obviously, have been sitting here for a
9 while. But because the case is in your hands, your schedule
10 from this point forward is up to you-all. The first thing you
11 need to do is select one of your members as your presiding
12 juror. And then you can decide to have a lunch break or do --
13 however you wish to proceed.

14 In the meantime, whoever is the presiding juror, I'll
15 ask that you hold on to this that has the file mark up in this
16 corner. And then when you return your verdict, it will also be
17 filed by Ms. Vela up here in this corner.

18 In the meantime, Ms. Vela and the support staff will
19 be getting the evidence together and in to you into the jury
20 room.

21 At this time, Mr. Miller, you may take the jury to
22 deliberate. Thank you.

23 (Recess at 12:59 p.m. until 3:47 p.m., jury out, defendant
24 present, open court)

25 THE COURT: You may be seated. Mr. Dorgan is the

1 presiding juror.

2 (Jury enters courtroom)

3 THE COURT: You may be seated.

4 Mr. Dorgan, without saying what the verdict is, is it
5 correct that, number one, you have been elected presiding
6 juror; and, number two, that the jury has reached a verdict?

7 THE JUROR: Yes, Your Honor, to both.

8 THE COURT: All right. If you'll hold on to that for
9 just a few moments.

10 As you-all probably figured out, Mr. Moreno is your
11 alternate. And so he was excused, subject to having to be
12 called back if something should happen to one of you-all before
13 the verdict was reached.

14 Now, before we receive the verdict, a couple of
15 things I want to say. First of all, I talked to you this
16 morning about how the support staff has helped to put this
17 production together. And, of course, the lawyers were the
18 people who actually got up and presented it to you.

19 I want to say a word about them. We cover 14
20 counties in this division of the Western District of Texas.
21 The whole district is 92,000 square miles. But in this 14
22 counties there are 6,000 lawyers. There are only 150 who are
23 allowed to do what Mr. Gordon and Mr. Harris do because they
24 have to go through extra training and experience to be able to
25 be Assistant U.S. Attorneys or people like Mr. Gordon who

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1 defend people like Mr. Brooks. So they have done an excellent
2 job in presenting to you the evidence that they had.

3 As I told you, every lawyer would like to have an
4 airtight case. Every medical doctor would like to have a
5 perfectly healthy patient. But the professionals don't get to
6 do it that way. They have to deal with what they have.

7 I also want to talk about law enforcement. As you
8 saw and as you were told, our law enforcement officers are held
9 to a much higher standard. It would be a lot quicker and a lot
10 more efficient in one way for our law enforcement agents to be
11 like the Gestapo or the Iraqi police or the Mexican police who
12 take people out behind the barn and beat a confession out of
13 them. As you saw, these agents don't operate that way. And
14 they operate within the confines of the Fourth Amendment under
15 which you are sitting; that they have to build their case
16 according to those constitutional standards.

17 Indeed, if there was any question that these agents
18 had violated any kind of constitutional protections, Mr. Gordon
19 would have filed what we call motions to suppress that
20 evidence. There weren't any filed because, clearly, these
21 agents did their job according to those high standards that we
22 expect of them.

23 I hope that this has been a learning experience for
24 you. Now that the case is over, you're free to go home and
25 tell your families and your neighbors and your students about

1 where you've been and what you did. And we hope that you will
2 be an ambassador for jury service. Certainly, it is different
3 from anything you see on television lawyer shows or television
4 police shows.

5 I want to talk about you-all, the jury. 80 years ago
6 my father left the orphanage where he grew up. And after World
7 War II, because of the GI Bill, he was the first in his family
8 to be able to go to school. And he went to law school. And so
9 he got out. And by the time all of World War II was done and
10 going to law school, I was already seven years old. And he
11 would take me to the courthouse. And so I got to watch some
12 trials.

13 In fact, the first trial I watched was over in the
14 old federal courthouse by the Alamo. And the judge was -- as
15 you go out this door and turn right, the first picture on your
16 right was the judge, Judge Rice. And when I would go with
17 him -- I didn't think about it a whole lot then, but looking
18 back on it, I did observe it. In those days the only people
19 who would have been sitting there were Mr. Dorgan and Mr.
20 Cochran. None of the rest of you would be seated in that jury
21 box because it was exclusively a white male domain in terms of
22 participating and being a part of our democratic experience.
23 So we've come a long way.

24 And you are to be congratulated on your service. You
25 have been not only judges for the United States and for Mr.

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1 Brooks, but also, as I told you, guardians for that document
2 under which you sit and to which we all pledge allegiance.

3 We want to thank you again. Now that the case is
4 over, you can read the newspaper articles that have been in the
5 paper and talk about the case. You're free to take your notes
6 home with you and to talk to your families and friends and so
7 forth.

8 Now, even though Mr. Gordon and Mr. Harris have done
9 as good a job as they could with what they had to work with,
10 they are practicing lawyers. And that means they want to
11 continue to learn and improve their skills. So if it should
12 happen that Mr. Harris or Mr. Gordon should speak with you or
13 communicate with you, you may talk with them now. They might
14 want to get your constructive critique on the way they present
15 their case and so forth. So that, though, is entirely up to
16 you as to whether you do that.

17 At this time, Mr. Dorgan, if you'll give the verdict
18 to Mr. Miller, please.

19 All right. Mr. Brooks, if you will please stand and
20 receive the verdict of the jury. And, Mr. Gordon, you want to
21 stand with him there?

22 MR. GORDON: Yes, Judge.

23 THE COURT: In Cause No. 10-CR-536, *United States of*
24 *America versus Robert Brooks*, Count 1 is guilty. Count 2, 3,
25 4, 5, 7, 8 and 9, the verdict of the jury is guilty.

1 In Cause No. 12-CR-666, *United States of America*
2 *versus Robert Brooks*, the verdict of the jury on Count 1 is
3 guilty. The verdict of the jury on Count 3 is guilty.

4 Thank you, sir. You may be seated.

5 Now, ladies and gentlemen, you may have observed
6 during the course of the trial that I was writing and taking
7 notes. And I was working on various other cases besides this
8 one. But I have some observations about this case.

9 First of all, your verdict comes from the Latin word
10 *veredicto*, or to speak the truth. And as we've said throughout
11 this trial, this has been a search for the truth. And your
12 verdict is one of which you need never second-guess yourself.
13 It came as a result of your collective wisdom and deliberation.

14 At the beginning we talked about the different
15 references in the Bible to fraud and trickery, about the money
16 temple and Jacob and Esau and the proverbs: Food gained by
17 fraud tastes sweet to a man, but he ends up with a mouth of
18 gravel.

19 And I came across another one in the Book of
20 Ecclesiastes. And this doesn't apply just to Mr. Brooks. It
21 applies to a lot of the people about whom you heard in this
22 case. Whoever loves money never has money enough. Whoever
23 loves wealth is never satisfied with his income.

24 And, of course, we also talked about examples of this
25 kind of thing from literature, starting with *Oliver Twist* and

1 Fagin. Mr. Harris stole some of my thunder because I was going
2 to talk about the Wizard of Oz and the man behind the curtain
3 pulling the strings. But he thought about that before I did,
4 or I had an opportunity to talk about it.

5 Other sayings that came to mind in watching this
6 human experience was: If something sounds too good to be true,
7 it probably is. And as you saw, these folks who were
8 victimized by this, some of that victimization was because of
9 their own love of money and thinking that they could make a
10 quick buck. And I'm told that some of them reported their
11 ill-gotten gains for income tax purposes. I'm told that some
12 of them didn't, but that will be followed up upon later.

13 And, of course, our parents have taught us,
14 hopefully, from the very beginning there's three things you
15 don't do: Don't lie, cheat or steal. And if you just observe
16 that simple lesson, you won't end up in federal court as a
17 defendant.

18 And last but not least, we heard, of course, from Ms.
19 Bussey, one of the ladies I think who garnered great sympathy,
20 and Ms. Artis and others who were manipulated and taken
21 advantage of. And Ms. Bussey, as you recall, is from Scotland.
22 And one of my favorite authors is Sir Walter Scott who is also
23 of Scottish descent and background. And he wrote a play called
24 Marmion. And his famous line in Marmion is: Oh, what a
25 tangled web we weave when we practice to deceive.

1 And then, of course, it all -- the house of cards did
2 collapse along with the economy. And while Mr. Brooks and the
3 people who were helping him weren't alone in causing the
4 problems -- but there were, unfortunately, lots and lots of
5 people like this who manipulated the system. And all of us
6 collectively, as a society, have had to pay for it.

7 Of course, now the pendulum has swung the other way.
8 Young couples now trying to get a loan, it's very difficult
9 because the rules have tightened up so much because of the
10 kinds of things that you-all saw happening in this case.

11 From here -- of course, you will be excused. You'll
12 give your button back to Mr. Miller.

13 Ms. Vela, do they need to go back downstairs?

14 THE CLERK: No, sir. No, sir.

15 THE COURT: All right. You'll be excused here in
16 just a few moments. From here, for those of you who are
17 interested in how this process moves along, first of all, we
18 just got our 2012 calendar year statistical report. There
19 were -- in the last 12 months, ended December 31st, there were
20 1,003 people like Mr. Brooks who came through this courthouse.
21 12 of them went to trial. 987 pled guilty. And so those who
22 do go to trial, there are a few who get found not guilty. Most
23 of them do get found guilty. The ones that do go to trial are
24 cases which, obviously, could go either way.

25 But once someone has been found guilty, either by the

1 plea of guilty or by a jury verdict -- Mr. Brooks will be
2 sentenced. As of now it will be May the 3rd. If you-all want
3 to come and watch the sentencing, you're free to do so. You
4 might call ahead and make sure the date has not been changed.
5 But between now and then the United States probation office
6 will do a full background report on Mr. Brooks.

7 Under the statutes that he was convicted of, he is
8 looking at a maximum of somewhere around 35 to 40 years in
9 prison. The sentencing system probably will not get up to that
10 level of the maximum because the Court looks at various
11 factors: His prior record, or his lack of prior record, his
12 behavior while he's in the pretrial release program, as he has
13 been now for a couple of years. And so the Court will make
14 that decision. As of now, it will be May the 3rd.

15 There are other -- the other people who testified
16 before you, who have pled guilty, have not been sentenced yet.
17 They will be sentenced in the meantime based in part, of
18 course, under the plea agreement, on their cooperation in this
19 case.

20 There are still about 15 other defendants who have
21 not either pled guilty or been tried. And now that this lead
22 defendant case is over with, probably what you-all have done in
23 this case will have some effect on those remaining defendants.
24 So that will all play out in time.

25 So, again, thank you very much. We've got some more

1 finishing up here to do. But the jury's excused at this time.
2 Thank you.

3 (Jury leaves courtroom)

4 THE COURT: All right. You may be seated.
5 And this needs to be filed.

6 THE CLERK: Yes, sir.

7 THE COURT: All right. Mr. Brooks, come right up
8 here with your lawyers.

9 First of all, Mr. Harris, anything else for the
10 government?

11 MR. HARRIS: Other than addressing the matter of
12 release pending sentencing, no, Your Honor.

13 THE COURT: I'm sorry. Addressing the matter of
14 what?

15 MR. HARRIS: Release pending sentencing.

16 THE COURT: Oh, no, I'm going to address that.

17 MR. HARRIS: Okay.

18 THE COURT: But I also wanted to mention -- I think
19 we've mentioned it to some of the other defense lawyers, but
20 now that this part is over, sometime, as soon as I can juggle
21 all these other matters, I want to have a status conference of
22 just the lawyers on these remaining defendants, and then we'll
23 see where we go from there.

24 Mr. Gordon, anything at this time before the Court
25 addresses Mr. Brooks?

1 MR. GORDON: No, Your Honor.

2 THE COURT: Mr. Brooks.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I haven't heard you speak in this trial.
5 I think we heard you speak during the course of one of the
6 pretrial conferences. You've made your decisions both in
7 getting to this trial situation but also in terms of -- based
8 on the jury's verdict, and I think the evidence was
9 overwhelming. And, indeed, the fact that it only took the jury
10 the little amount of time it did to reach a verdict, with the
11 enormous volume of evidence in this case, there wasn't anything
12 even close to a shadow of a doubt in your favor, much less a
13 reasonable doubt. And as you heard me say, Mr. Gordon did the
14 best he could. And, indeed, his closing argument held the
15 jury's attention. It gave them something to think about, so
16 forth. But he didn't have a whole lot to work with.

17 The tragic thing, as -- I referred to this, also, is
18 that this country is in a mess because of people like you. And
19 you didn't, of course, bring down the whole banking industry.
20 But there were lots of other folks like you, the Bernard
21 Madoffs and the -- I forgot to tell the jury that story. But
22 people like you, not only in the mortgage industry but credit
23 card abuse, identity theft, all of those sorts of things hurt
24 the whole economy.

25 And when I was a law student in Dallas, Texas, Judge

1 Sarah T. Hughes, who was a little, bitty lady who swore in
2 President Johnson on Air Force One, she used to come and teach
3 us that people like you, who have an education, who are bright,
4 are held to a higher standard, who have a whole lot more
5 opportunities than people who haven't had opportunities, and
6 who have the ability -- obviously, you're quite capable of
7 running a good business, just like some of these drug
8 organizations. They're very complex organizations.

9 Unfortunately, they're put together for illegal purposes. And
10 you had the ability to do that. But it was all built on lies.

11 And, of course, on a human level you had to sit
12 here -- and I don't know whether you felt any of the pain that
13 the rest of us felt, but it was terribly painful for me, and I
14 could tell for others, to have to watch your wife, your
15 mother-in-law, Mrs. Artis, these people who were devastated by
16 your scheme, just so that you could drive an Aston Martin. Did
17 you have an Aston Martin before you started this?

18 THE DEFENDANT: No, sir.

19 THE COURT: So was it worth it to have an Aston
20 Martin and do this to your mother-in-law and your wife?

21 THE DEFENDANT: No, sir.

22 THE COURT: Okay. All right. Marshal.

23 The probation office will come and visit with you and
24 make a presentence report, and you are now remanded to the
25 custody of the United States Marshal to begin serving whatever

1 sentence you have. Obviously, the Court doesn't know what it
2 is. But you will serve time in custody until your sentencing
3 date on May the 3rd.

4 Mr. Harris, anything else before we finish?

5 MR. HARRIS: No, Your Honor.

6 THE COURT: Mr. Gordon?

7 MR. GORDON: No, Your Honor.

8 THE COURT: Mr. Brooks, any questions?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right. Good luck. We're in recess.

11 Thank you.

12 * * *

13 (End of requested transcript)

1 -oOo-

2 I certify that the foregoing is a correct transcript
3 from the record of proceedings in the above-entitled matter. I
4 further certify that the transcript fees and format comply with
5 those prescribed by the Court and the Judicial Conference of
6 the United States.

7
8 Date: 5/24/2013

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